

# NHTSA OVERSIGHT: THE ROAD AHEAD

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## HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND  
COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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## NHTSA OVERSIGHT: THE ROAD AHEAD

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THURSDAY, MARCH 11, 2010

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:48 p.m., in Room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush (Chairman of the Subcommittee) presiding.

Members present: Representatives Rush, Schakowsky, Sutton, Barrow, Braley, Dingell, Markey, Stearns and Whitfield.

Staff present: Michelle Ash, Chief Counsel; Anna Laitin, Professional Staff; Will Cusey, Special Assistant; Bruce Wolpe, Senior Advisor; Danny Hekier, Intern; Jeff Wease, Deputy Information Officer; Elizabeth Letter, Special Assistant; Lindsay Vidal, Deputy Press Secretary; Shannon Weinberg, Minority Counsel; Brian McCullough, Minority Senior Professional Staff; Sam Costello, Minority Legislative Analyst; Robert Frisby, Minority FTC Detailee; Sarah Kelly, Press Intern; and Kevin Kohl, Minority Professional Staff.

### OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee will now come to order.

Let me just say something in regards to those people who have been waiting since 10 a.m. this morning. I sincerely apologize, but as you know, the duties of the House are varied and we did have to postpone this meeting for a series of votes and other matters, so again, please accept my sincere apologies for the delay. We are very cognizant of your time and we value your time, so please accept our humble apology. We will now proceed with this hearing.

This hearing today is a hearing of the Subcommittee on Commerce, Trade, and Consumer Protection, and the subject matter is NHTSA: The Road Ahead. The Chair recognizes himself for 5 minutes for the purposes of an opening statement.

The Subcommittee on Commerce, Trade, and Consumer Protection again welcomes our participants here at this meeting. Our main purpose for coming together today is to assess NHTSA's functionality and its effectiveness. Last month, I promised America's motorists, passengers, and pedestrians that as this subcommittee takes up its jurisdictional responsibility to reauthorize NHTSA, we would help NHTSA regain the public's confidence.

This is our first occasion to welcome NHTSA's newest administrator, Mr. David Strickland, to this hearing and to this subcommittee and to this committee. Although Administrator Strickland's first several months at NHTSA's helm have been rocky and filled with difficult challenges, I know him to be a highly intelligent, thoughtful and capable professional. I expect that he will "shoot straight" with us as we begin crafting reauthorization legislation that the members of this subcommittee can quickly support and move through this subcommittee and through the full committee and take it to the floor of the House.

I look forward to listening to both witness panels and hearing their views on what NHTSA is currently doing through its crash data analysis, its research and its rulemakings to promote vehicular safety.

Although I am typically not very stringent about enforcing time restrictions on member statements and questioning, this is a different day. We are starting late, and because of the timeliness, I will not hesitate to drop the gavel today to keep us on point, and I might say, on the right path, as much as possible. The right road may be more appropriate. We have a lot of ground to cover and we expect a number of members to participate. I would ask my colleagues for their understanding and to be as cooperative as possible as it relates to the time considerations.

Before I yield my time, I would like to say a few words about the scope of today's hearing. Let me be clear, this is not a hearing about Toyota's recalls or its practices. Please try to restrain yourselves from veering too far away from our purpose of examining NHTSA and NHTSA's configuration, NHTSA's organization, and NHTSA's performance in the areas of defects investigation, safety standards and enforcement.

Again, I want to thank all of our witnesses for taking the time out of your very important schedules in order to advise this subcommittee. Again, I want to say we are more than thankful to you for your patience. Let us work collaboratively and constructively to ensure that NHTSA has on hand the necessary resources and capacity to fulfill its stated mission of saving lives, preventing injuries and reducing economic costs due to road traffic crashes through education, research, safety standards and enforcement activity. You are all great Americans and you are becoming greater Americans if you help us improve NHTSA. Thanking you again. I yield back the balance of my time.

And now I recognize the ranking member for 5 minutes, my friend from Kentucky, Mr. Whitfield.

**OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. WHITFIELD. Well, thank you, Mr. Chairman. I also want to thank you all for your patience, and we welcome the witnesses on both panels.

I would like to start out first of all this afternoon by simply congratulating the National Highway Traffic Safety Administration. I notice that today's vehicles are safer than ever. In 2009, there were 33,963 highway fatalities, which is too many, but the fewest since



1954. The rate of fatalities in 2009 was 1.6 deaths per 100 million vehicle miles, and when this record was first recorded back in 1979, there were 3.34 fatalities per 100 million vehicle miles. I think that should make the public feel more comfortable, even though one death is one death too many.

As a result of all the focus on Toyota, some commentators have opined that the system is broken and needs to be fixed. Those opinions are wide ranging and point to many different issues ranging from NHTSA's authority to the way in which it has utilized its authority. Mr. Sean Kane, who is president of the Safety Research and Strategies Company, which does a lot of consulting work for plaintiff trial lawyers, testified during the Oversight and Investigation Subcommittee hearing last month when he was asked the question, does NHTSA need more tools, more authority. He simply said that "I think the number of errors were made in the process of these investigations, not so much that the tools were not available as much as the tools were not employed." So I think it is important that we consider all of those things as we move forward.

As far as unintended acceleration, this is a problem that has cut across 3 decades and multiple Administrations without successful resolution. Similar to NHTSA's finding in the late 1980s and early 1990s when it commissioned an independent examination of unintended acceleration or the more recent review conducted between 1999 and 2000, the current investigation has not answered all questions and may never do so to everyone's satisfaction.

Regarding NHTSA's action, it is also not clear what more they could have done than what they have already done and whether the outcome would be any different. Administrator Strickland testified last week that there simply wasn't a strong enough case to force the issue of a mandatory recall, even if that had been decision NHTSA's decision, and if a problem cannot be clearly identified, a proposed fix most likely will not have a meaningful benefit.

I might also say that to date the Office of Inspector General within the Department of Transportation announced the initiation of an audit of NHTSA's Office of Defects Investigation to conclude an examination of its handling of Toyota as well as the broader issue of the process that ODI employs to examine and investigate safety defects. The Office of Inspector General's objectives are similar to those of this hearing and that is simply to determine whether NHTSA has the tools and information available to investigate safety defects and identify possible improvements to its current procedures, and I think that is what this hearing is all about as we move forward with NHTSA, and I would yield back the balance of my time.

[The prepared statement of Mr. Whitfield follows:]

Statement of the Honorable Ed Whitfield  
Ranking Member, Subcommittee on Commerce, Trade, and Consumer  
Protection  
Hearing on National Highway Traffic Safety Administration  
March 11, 2010

- Thank you Chairman Rush for calling this important hearing to conduct oversight and examine the role of the National Highway Traffic Safety Administration in conducting recalls in the wake of the Toyota recalls.
- Some commentators have opined the system is broken and needs to be fixed. Those opinions are wide ranging and point to many different issues ranging from NHTSA's authority to the way in which it has applied its authority.
- As one witness testified during the Oversight and Investigations Subcommittee hearing last month, he believed it wasn't a lack of tools at fault, but rather the use of the incorrect tools as it applies to the Toyota problems.
- A careful review of the facts thus far does not offer any easy answers or solutions. What we know is that Toyota has recalled over 5 million vehicles and gone to lengths to repair "sticky" pedals and address floor mat entrapment. But it is not clear yet that anyone can definitively say that either of those issues – or their solutions - was the problem related to every report of sudden unintended acceleration.
- Unintended acceleration is not a phenomenon unique to any particular manufacturer. In the past decade alone, NHTSA has received thousands of consumer complaints of unintended acceleration each year. In recent years Toyota's share of those complaints has risen and triggered subsequent NHTSA investigations which have led to the current recalls.

- NHTSA has taken steps to investigate the recent problems, including the purchase of the actual vehicle owned and driven by one of the witnesses at the Oversight Subcommittee's hearing last month, Mrs. Smith. I commend NHTSA on their proactive response.
- Unfortunately, we do not know whether NHTSA - or any manufacturer - will be able to accurately identify the cause of every report of unintended acceleration it receives.
- The problem has cut across three decades and multiple Administrations without resolution. Similar to NHTSA's finding in the late 1980's and early 1990's when it commissioned an independent examination of unintended acceleration, or the more recent review conducted between 1999 and 2000, the current investigation has not answered all questions and may never do so to everyone's satisfaction.
- Left unanswered are the thousands of consumer complaints each year for all models and types in which the consumer experiences some form of unintended acceleration. Some may be explained by user error while others cannot. And like a problem we may hear in our own car infrequently, often it disappears when we take it to the mechanic and cannot be reproduced.
- Regarding NHTSA's actions, it is also not clear what more they could have done than what it has already done, and whether the outcome would be any different. Administrator Strickland testified last week that there simply wasn't a strong enough case to force the issue of a mandatory recall even if that had been NHTSA's decision. And if a problem cannot be clearly identified, a proposed "fix" most likely will not have a meaningful benefit.
- To date, the Office of Inspector General within the Department of Transportation announced the initiation of an audit of NHTSA's

Office of Defects Investigation (“ODI”), to include an examination of its handling of Toyota as well as the broader issue of the process ODI employs to examine and investigate safety defects.

- The Office of Inspector General’s objectives are similar to those of this hearing: determine whether NHTSA has the tools and information available to investigate safety defects and identify possible improvements to its current procedures.
  - **At a minimum, we should not jump to conclusions about the efficacy of NHTSA’s efforts or whether they had sufficient tools and used them appropriately until we can review the Inspector General’s report and recommendations.**
- As we examine NHTSA’s actions, authorities, and resources, if legislation is determined to be warranted, it will move through this Subcommittee. So I commend your decision to hold this hearing as we seek the facts. I look forward to the testimony and working with you Mr. Chairman to ensure our roads and cars remain safe.

Mr. RUSH. The Chair recognizes the vice chair of the subcommittee, Ms. Schakowsky of Illinois, for 5 minutes for the purpose of opening statements.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I am so happy that we are having this hearing today.

Without a doubt, the National Highway Traffic Safety Administration's profile has risen dramatically as a result of its role in responding to the dangerous problems with Toyota vehicles, probably a little higher profile than perhaps you had wanted or anticipated.

This hearing will give us the opportunity to explore whether NHTSA has the resources, expertise and authority necessary to sufficiently investigate reports of safety problems and enforce existing safety rules.

I want to welcome Mr. Strickland and congratulate him on his new position and welcome him to this committee. I know that you really are an advocate for consumers and it was really a pleasure to be able to work with you earlier on the Consumer Product Safety Improvement Act when we worked together when you were in the Senate. So I know of your commitment to consumers and consumer safety.

My guess is, though, that right now we will find some gaps that need to be filled, and I look forward to working with Chairman Rush and the subcommittee and with NHTSA in crafting legislation to address those gaps.

Mr. Strickland, in addition to discussing issues surrounding NHTSA's oversight and enforcement activities, I am looking forward to begin a dialog with you about children's safety in and around cars and other proactive safety measures. I appreciate that we had a moment before this 10:00 hearing to discuss this a bit. In past year, Congress has enacted legislation requiring NHTSA to issue specific safety regulations. Dear to my heart has been the Cameron Gulbransen Kids Transportation Safety Act signed into law in 2008, requiring rulemaking on a rear visibility standard and a power window standard, and I know that you are working on both of these issues as we speak and it is my hope that both standards will be very strong in order to protect children.

I have to tell you that I think the hardest thing that I have done in this Congress, I am in my 12th year now, is having parents come with pictures of their children who are no longer with us, sometimes because they themselves inadvertently, and we know in large part due to design problems actually were responsible for those children's deaths. It is just the most unbearable thing to think about, that these were preventable, and yet these parents have turned this tragedy into a crusade to make automobiles safer, not just in traffic but not in traffic. And so I am looking forward to working with you to create standards that actually do prevent those accidents from happening.

My concern is that in the past that Congress was forced to take action because NHTSA was not initiating badly needed rulemaking on its own and so I look forward to working with you to make sure

that NHTSA has all the tools it needs and that it uses its tools to protect consumers. I look forward to that very much.

Thank you, Mr. Chairman. I yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Iowa, Mr. Braley, for 5 minutes.

**OPENING STATEMENT OF HON. BRUCE L. BRALEY, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. BRALEY. Thank you, Mr. Chairman. I want to applaud you and the ranking member for holding this important hearing.

It is really an honor to have you here today, Mr. Strickland. We haven't met before. You have an important responsibility that is too often kept on the back pages of most newspapers and magazines, and it is only when something dramatic like these Toyota recall hearings comes up that the public starts to understand the critical role that your agency plays. You look to me like you are a young man, so I don't know if you know where you were on December 2, 1994, but I know where I was. I was not sitting in that chair, even though I was supposed to be sitting in that chair, because I was supposed to be testifying that day at a recall hearing on side-saddle fuel tank explosions involving CK General Motors pickup trucks, and I did not get the opportunity to testify because a settlement was reached that day between your agency and the Secretary of Transportation and General Motors whereby \$51 million was paid for supposed consumer safety programs so that the recall hearing would not go forward where people like me would have an opportunity to talk about the impact on human lives of defects that do not get solved, and I was going to testify that day about a client of mine, a young woman in Iowa, who had the right side of her face burned off when the pickup truck she was riding in was involved in a collision and the pickup rolled over on its side, and because of the placement of those fuel tanks outside the frame rails, the flames went up the side of that pickup truck and engulfed her face in flames, and her husband, who was driving the pickup truck, pulled her young son, who was seated between them, through the broken windshield and got him to safety, and when he went back to try to rescue his wife, he reached into grab her and pulled out big chunks of her hair that had burned off in the fire. And he went back to his son and told him Mommy is in heaven now, but miraculously, this brave woman survived and went through months and years of grueling, painful skin grafts, hair transplants and incredible disfigurement because of that defect.

When we gather for these hearings, we spend a lot of time talking in very arcane, technical language about sudden, unanticipated acceleration and electronic control safety devices, but we rarely talk about the human impact of the failure to act, and so when you think about the important responsibilities your agency has, it is important not just to think about where we are today and where you are going to take that agency going forward, it is important to look backwards at the legacy of this agency and why there are some people who feel it is not fulfilled its responsibility to keep the American public safe.

So I look forward to the opportunity to have a meaningful, long-term conversation with you about the important responsibilities

you have, and I look forward to hearing your testimony today as we work together to get to the bottom of this unexplained problem, and I yield back.

Mr. RUSH. The Chair now recognizes the chairman emeritus of the full committee, my friend from the State of Michigan, Mr. Dingell, for 5 minutes.

**OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. Mr. Chairman, I thank you for your kindness and courtesy. I commend you for this hearing, which is very important, and I also commend you for your fine leadership of this subcommittee which you have done a splendid job.

I want to observe that NHTSA's response to the safety defects implicated in these recalls has been sluggish. Likewise, NHTSA's decisions to terminate several internal analyses related to the defective Toyota vehicles since 2003 due to a purported lack of resources leave one with the impression that the agency lacks the appropriate level of personnel and appropriations with which to fill its mandate. We want to find out if that is the case today because if that be so, then the safety of the American public is of course in question.

As was the case with its sister agency, the Consumer Products Safety commission, NHTSA has suffered years of stagnation in funding and in many cases has endured a reduction in personnel levels, most notably in its important Office of Defects Investigation, ODI. Nevertheless, the agency possesses a number of powerful enforcement tools, many of which were augmented under the Transportation Recall Enhancement Accountability and Documentation, or the TREAD Act, of 2000. In addition to being able to compel manufacturers to recall defective vehicles, NHTSA may impose civil penalties for noncompliance and criminal penalties for falsification or withholding of information. This in mind, we must ask ourselves today why these authorities were not used in the case of recent Toyota recalls. Put another way, are the problems with NHTSA's response to the recalls better traced to a lack of authority or rather to ineptitude and lack of resources. At present, it appears that the latter is more persuasive. Although I will not discount the possibility that improvement can be made in the statutes of conferring NHTSA its authority.

Our discussion of NHTSA's authorities and resources must not lose sight of what I believe to be malfeasance on the part of Toyota improperly addressing the problems that led to the recall of over 8 million vehicles. To reauthorize NHTSA without a view towards compelling better behavior by automobile manufacturers would be a self-defeating exercise.

Two weeks ago, my questioning of Mr. James Lentz, Toyota head of sales for North America, indicated that all of Toyota's decisions relating to recalls are made in Tokyo. More disquieting is the fact that U.S. officials, the Secretary of Transportation, and the then-head of NHTSA had to fly to Japan to persuade Toyota to initiate recalls in the United States. In brief, we must examine how best

to oblige automobile manufacturers selling vehicles in the United States to comply quickly and fully with our regulations and law.

In closing, I suggest my colleagues bear these comments in mind as we begin what must be the first of many conversations about improving federal oversight of transportation safety. I further ask that these discussions and their resultant legislation will be bipartisan, collegial and subject to the regular order for these are the hallmarks of this committee's best work over the years.

Mr. Chairman, I thank you for your kindness. I thank our witnesses for appearing before us and I yield back the 58 seconds remaining to me.

Mr. RUSH. The Chair thanks the gentleman for his extraordinary kindness.

It is the normal practice of this committee to swear in the witnesses, so would you stand and raise your right hand?

[Witness sworn.]

Mr. RUSH. Let the record reflect that the witness has responded in the affirmative.

The Chair recognizes himself now for 5 minutes for questioning the witness. Oh, I am sorry. The Chair is getting ahead of himself. The Chair wants to recognize now the administrator, because he has certainly some opening statements, so the Chair recognizes the administrator for 5 minutes for the purposes of opening statement.

**TESTIMONY OF HON. DAVID L. STRICKLAND, ADMINISTRATOR,  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

Mr. STRICKLAND. Thank you, Mr. Chairman. To be perfectly honest with you, my statement is not as important as the committee's questions, so I can understand you wanting to hurry up and get to business.

Mr. RUSH. A great beginning.

Mr. STRICKLAND. Thank you so much for your kind words, all of you, and before I begin my formal remarks, I want to just take a second to acknowledge Mr. Braley and Ms. Schakowsky's note about the human toll. We have a tremendous amount of death on today's highways, and I am very happy to report some very good news, but 33,000 people is a tremendous amount of people to die, and one person is too many, and the personal toll that it takes on a family is absolutely catastrophic, and in my time that I served as a staffer on the Senate Commerce Committee, I have had the opportunity to spend time with countless victims including mothers and fathers who have killed their children in unfortunate back-over accidents and folks that have been disfigured and burned because of traffic accidents, because of defects, and you can never properly capture what this means to people, so I am fully aware of the responsibility that I have and that every day this agency has one goal. That is to keep people alive and safe on the road, and we can never do that job well enough. We just simply can't. But that doesn't mean that we can't try, and we will continue to put forward maximum effort as we have to make sure that we accomplish the goals. But thank you so much for your observations and they are taken well to heart.

Chairman Rush, Ranking Member Whitfield and members of the committee, thank you for the opportunity to appear before you



today to discuss the Department of Transportation's vision for the future of the National Highway Traffic Safety Administration and its important safety programs. Transportation safety is the Department's highest priority. NHTSA's safety programs are an integral part of addressing that priority. Even before I was sworn in as administrator on January 4th, I knew NHTSA's programs worked and they work well. We just released numbers that show a continuing dramatic reduction in the overall number of highway deaths. The Secretary this morning released a report that projects that traffic fatalities have declined for the 15th consecutive quarter and will be 33,963 in 2009, the lowest annual level since 1954, but we must do more. The loss of more than 33,000 people represents a serious public health problem to our Nation. We will not rest until that number is zero.

So how do we get there? Highway safety is a complex problem, and NHTSA has built a broad spectrum of programs that address both behavioral and vehicle-related causes of highway deaths. The linchpin of all of our programs is good data, good science and careful engineering.

When I was sworn in 2 months ago, I felt it was important to look at whether there was a need to improve NHTSA's effectiveness in this era of the global marketplace and rapidly changing technologies. One of my first decisions was to question whether NHTSA is being well served by the four vehicle statutory authorities on which it relies to regulate. The reality is, is that while current authority does work and various constituencies have learned to work with them, they were written in the 1960s and the 1970s when the world and the automobile market were profoundly different. The question I pose and the questions I want to have is whether NHTSA's statutory authorities accommodate the modern automobile, the modern competitive marketplace even. More importantly, do they allow us to regulate in a way that allows the industry to build and sell safe products that the consumer wants to drive? Do they allow us to promote safety, innovation and fuel efficiency while providing effective regulatory and enforcement oversight? I have asked our legal and program staff to take a look at our existing authorities to answer these questions and to make their best recommendations.

I believe this self-assessment is critical and supports the President's goals for transparency and accountability in government, and while we are taking a hard look at our authorities, I also commit to look at the current ethics rules. I believe the ethics standards set by this Administration are the highest ever established by any Administration, and I fully support Secretary LaHood's desire to tighten and enforce these rules across the Department of Transportation. If there is any evidence of any violations of these rules, swift and appropriate action will be taken.

The next question I ask of NHTSA is, do we have the programmatic expertise that we need to support our programs? NHTSA has a diverse and experienced workforce and we will take full advantage of their skills, talent and expertise. If as we go forward we find that we need to shore up our workforce in certain areas, we will recruit aggressively. We are currently requesting the

authority to hire 66 more people next year and will target these positions to meet our program needs.

Well, at this point it appears that I am out of time and I will cut my remarks here, and I thank the committee for their time and their patience and I stand ready for questions.

[The prepared statement of Mr. Strickland follows:]

**STATEMENT OF  
THE HONORABLE DAVID L. STRICKLAND  
ADMINISTRATOR, NATIONAL HIGHWAY  
TRAFFIC SAFETY ADMINISTRATION  
BEFORE THE  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMERCE, TRADE, AND  
CONSUMER PROTECTION  
U.S. HOUSE OF REPRESENTATIVES**

HEARING ON

***NHTSA OVERSIGHT: THE ROAD AHEAD***

March 11, 2010

Chairman Rush, Ranking Member Whitfield, and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the Department of Transportation's vision for the future of the National Highway Traffic Safety Administration (NHTSA) and its important safety programs.

Safety is the Department's highest priority. NHTSA's safety programs are an integral part of addressing that priority. Over the last two years we have seen a dramatic reduction in the overall number of highway deaths. In 2008, we had the lowest highway fatality rate ever recorded and the lowest number of fatalities since 1961. Based on early projections, we expect to see similar reductions in 2009. Still, the loss of over 37,000 people in traffic-related crashes in a single year, as occurred in 2008, represents a serious public health problem to our nation.

One of the first questions I asked when I became the Administrator of NHTSA is whether our current statutory authority—drafted largely in the 1960s and 1970s—is sufficient to address the modern automobile and the global automotive marketplace. I have asked our legal and program staffs to take a very close look at the scope and effectiveness of those authorities and make recommendations about how they may be improved. I look forward to working with this committee on how NHTSA's ability to perform its mission might be strengthened through legislation.

### **An Overview of NHTSA and its Mission**

NHTSA is not a large agency. We currently have 632 positions. The President's budget for fiscal year 2011 requests funds for an additional 66 positions to help strengthen our ability to address the enormous safety mission that this agency faces.

NHTSA's safety programs address both the behavioral and vehicle aspects of highway safety. Human behavior is by far the leading cause of highway crashes and deaths. This is why our programs place such a heavy emphasis on reducing drunk and drugged driving, encouraging seat belt use at all times, and underscoring the dangers of distracted driving. Secretary LaHood has sparked an important international dialogue on the subject of distracted driving, which we estimate contributes to about 6,000 deaths a year in the United States alone. Funding for the grant programs to states to conduct educational and enforcement efforts to address these behavioral problems is absolutely essential for the safety of drivers and their passengers. These programs have demonstrated enormous successes over the years in driving down the number of deaths involving alcohol and driving up the percentages of vehicle occupants who wear seat belts. For example, in the years 2000 through 2009 the percentage of people who used seatbelts rose from 71 percent to 84 percent. We are just beginning our efforts on the distraction issue, but we believe an effective program to reduce distracted driving can also yield enormous safety benefits.

Our vehicle safety program is also extremely important. Our research and rulemaking priorities are focused on finding the areas of highest risk where new or amended vehicle standards can make a significant impact on reducing the death toll on our nation's highways. NHTSA regulation of occupant crash protection has resulted in significant improvements in the crashworthiness of today's vehicles. These standards have saved many thousands of lives and prevented countless injuries. NHTSA has also used its vehicle crash ratings to motivate vehicle manufacturers to voluntarily improve the safety of their vehicles above the federal standards. This New Car Assessment Program (NCAP), known generally as the government's 5-star safety rating program, has been an overwhelming success in driving improvements in vehicle safety. NHTSA was the first vehicle safety agency in the world to implement such a program. Today, these programs have been implemented around the world.

Even though fatal crashes resulting from a vehicle problem are relatively rare by comparison to such crashes caused by human factors, we must do everything we can to find and eliminate those causes. Moreover, the emergence of crash avoidance technologies in vehicles offers significant promise for reducing crashes related to driver error. For example, electronic stability control, which is being rapidly phased into the new vehicle fleet, will be required by NHTSA in all new passenger vehicles manufactured on or after September 1, 2011. This technology will

significantly reduce fatalities that result from loss of control, including deadly rollover crashes. The agency estimates that when this technology is fully implemented into the fleet it could save up to 10,000 lives a year. Other technologies are now being developed and deployed into the fleet that also have the potential to reduce crashes, reduce injuries, and save lives. Technologies such as lane departure warning, forward collision warning, and crash imminent braking are now beginning to be offered in some new vehicles. One area we are looking at very closely is brake override, a system that ensures that a brake application will supersede a conflicting throttle application in certain circumstances. Manufacturers are equipping many of their vehicles with this feature, but there is not currently any standardization with regard to the conditions under which this feature will work or precisely how it will work. If our review indicates that requiring this feature could substantially reduce the most dangerous kinds of sudden acceleration, we will strongly consider a rulemaking to require it.

NHTSA's vehicle safety enforcement program has two major components: ensuring compliance with NHTSA standards and conducting defects investigations. The Office of Vehicle Safety Compliance tests new vehicles and equipment to determine whether they meet the applicable Federal Motor Vehicle Safety Standards (FMVSS). Manufacturers must certify that their products meet those standards. If the vehicles or equipment do not comply, manufacturers must recall them and provide a remedy to the consumer.

The Office of Defects Investigation (ODI) has a different mission. ODI searches through consumer complaints, manufacturer data, and other sources for information that might indicate a defect trend. Where it can find a possible defect trend, it investigates. If NHTSA can demonstrate that a defect exists and that it poses an unreasonable safety risk, the agency can order a recall. I will explain this process more fully below.

#### **NHTSA's Programs for Informing the Public of Safety Issues**

A central element of NHTSA's mission is getting timely information to the public on highway safety issues. This requires collecting solid data in the first place. NHTSA's National Center for Statistics and Analysis is the assembler and primary analyst of our safety data. That office maintains several national data bases and produces detailed and prompt analyses of the data to support public educational efforts, rulemaking, research, and enforcement.

In close collaboration with our program offices and data analysts, our communications office organizes and implements public awareness campaigns and paid advertising to support program efforts targeting the leading causes of crashes and encouraging use of the most important safety measures. These include the public campaigns to discourage drunk driving ("Over the Limit, Under Arrest") and to encourage seat belt use ("Click It or Ticket"). More recently, the agency

has mounted efforts related to distracted driving. We launched a government website--  
[www.distraction.gov](http://www.distraction.gov)--with comprehensive information on distracted driving.

In the vehicle safety area, the agency issues safety advisories on some of the most important issues, including notable recalls. NHTSA's most well known program for providing vehicle safety information to the public is the NCAP program, which tests new vehicles and provides the results on a public website ([www.safercar.gov](http://www.safercar.gov)). These "star ratings" are known to many consumers and used by many manufacturers to emphasize their products' safety. The program has helped inform consumers and motivate manufacturers to continually improve various safety features. NHTSA will soon launch a revised NCAP program to help push manufacturers to a new level of safety.

Important information on NHTSA's vehicle safety enforcement activities is also readily available to the public, also on [www.safercar.gov](http://www.safercar.gov). Consumers can find on the website information on recalls that might apply to their vehicles or vehicle equipment. In fact, over the last two years NHTSA has initiated a subscription service that allows consumers to sign up for immediate email alerts on recalls that affect their vehicles, child seats, or tires. Consumers who sign up do not have to rely on media reports or await official notification from the manufacturer to learn about recalls that may affect their safety. We are hoping that this new tool will help increase the percentage of consumers who have recall repairs done. We are concerned that many consumers ignore recall notices, leaving themselves and others unnecessarily exposed to safety risks.

The website also contains information concerning all open and closed safety defect investigations. Consumers who experience what they believe are safety problems with their vehicles or vehicle equipment may write to us or file complaints on the website or through NHTSA's telephone hotline. We review every complaint and analyze available data constantly to identify potential safety problems early. These complaints provide the most important data NHTSA's defect investigations staff have for deciding what emerging problems may warrant investigation. NHTSA is considering ways of making the online complaint form more user friendly as a way of encouraging more people to provide us information. We are also looking for ways to enhance the program's outreach to the public to increase awareness of the defects investigation program and the complaint process.

#### **NHTSA's Defects Investigation and Recall Process**

As previously mentioned, NHTSA's vehicle safety enforcement program has two major elements: (1) ensuring compliance with the safety standards, and (2) investigating possible safety defects in vehicles and vehicle equipment. While the compliance program rests on a large

body of detailed standards (the FMVSS) developed over the last four decades, the defects investigation program rests on a single statutory standard, i.e., the presence of a defect that creates an “unreasonable risk” to safety.

Manufacturers have a duty to inform NHTSA of defects that create an unreasonable risk to safety and to then initiate a recall to remedy the defect. In many situations, however, the presence of a defect and/or its relationship to safety risk is not readily apparent. Where data suggest that a defect exists and it presents an unreasonable risk but manufacturers have not made such a determination and initiated a recall, it is up to NHTSA to determine whether a defect exists and demonstrate that the defect creates an unreasonable risk.

NHTSA’s defects investigation office, ODI, has a staff of 57 people. Of those, 14 people screen complaints and data for possible defect trends and 22 people actually conduct defect investigations. Their goal is to find possible defect trends that may indicate significant safety risks in particular makes, models, and model years; determine whether those trends create an unreasonable safety risk and are being caused by a defect that ODI can demonstrate; and, if so, persuade—or require--the manufacturer to conduct a recall. The remainder of the staff performs other important functions, such as tracking the hundreds of recalls that occur each year. That entails monitoring quarterly reports on completion rates, ensuring the scope of the recalls is correct, and compiling information on recalls for the public.

The defects investigation process begins with the screening of incoming information for evidence of possible defect trends. Complaints from consumers are the primary source of information. NHTSA receives over 30,000 complaints a year and reviews each one promptly. Although NHTSA staff make direct contact with some complainants to obtain additional information when it appears quite useful, they cannot contact every complainant. Screeners also look at technical service bulletins issued by manufacturers, reports of foreign recalls, and supplemental information such as occasional reports from insurance companies and information available on the Internet. Also, members of the public may file petitions asking NHTSA to investigate and order a recall on a particular matter. The agency carefully reviews each petition before making a decision on whether to grant or deny it. If granted, a formal investigation is opened.

Another important source of information is Early Warning Reporting (EWR) data submitted quarterly by manufacturers of vehicles, tires, and child seats. For light vehicle manufacturers, the data include counts of property damage claims, warranty reports, consumer complaints, and field reports. These aggregate data are broken down by make, model, and model year and by component category (e.g., steering, braking, engine, speed control). Manufacturers must also submit brief reports on each claim against the company for death or injury allegedly related to a

possible vehicle defect. The volume of the data received is enormous. NHTSA uses sophisticated data mining techniques to identify in the data any trends that may be evidence of safety defects.

Those who screen the EWR information and those who screen the other sources are in constant communication. When patterns emerge from any source, the screeners look very carefully at what may be behind the patterns. Where there is possible evidence of a defect trend, the screening staff recommends that the appropriate investigating division consider opening an investigation. ODI staff meets regularly to determine which recommendations warrant opening an investigation and which may warrant continued monitoring. Considerations in choosing what to investigate include the preliminary evidence on the frequency and severity of the problem and the available investigative resources.

An investigation begins with a preliminary evaluation. This often entails detailed interviews with complainants, requesting relevant information from the manufacturer, and analysis to determine whether there is sufficient evidence either to seek a recall or continue to a more in-depth investigation. The next stage is the engineering analysis, which involves gathering additional information from consumers and the manufacturer, perhaps some testing of vehicles or equipment or surveys of peer vehicle experience, and in-depth analysis of the underlying problem.

If, at any stage, ODI staff believes they have enough information to demonstrate both a specific defect and that it creates an unreasonable risk to safety, they can then push the manufacturer to conduct a recall. Where the manufacturer resists, ODI management and NHTSA counsel confer to determine the best course of action. If the agency decides it can meet its burden, it tells the manufacturer it expects a recall to occur. Where the manufacturer is not persuaded by NHTSA to undertake a recall voluntarily, NHTSA may issue an order requiring that the manufacturer conduct the recall. First, however, NHTSA must provide the manufacturer an opportunity for a hearing. Then, if the agency concludes that a recall should occur and issues an order, the manufacturer can resist the order. In that case, in order to prevail, NHTSA must go to court and prove that a defect exists and that it creates an unreasonable safety risk. All of this means that NHTSA must remain mindful of its burden of proving its case as it selects matters for investigation, completes the investigation, and moves to the formal process of requiring a recall. If ODI cannot establish that a safety-related defect exists, it must move on to other potential subjects for investigation.

We believe the defects program has functioned extremely well over the years in identifying defects that create unreasonable risks and ensuring that recalls occur in those situations. The result has been thousands of recalls involving hundreds of millions of vehicles and items of



motor vehicle equipment (such as child seats), which have helped to protect millions of consumers from the safety hazards they might otherwise have faced. We take our responsibility to protect consumers very seriously and will continue to ensure that manufacturers fulfill their obligations to identify and remedy safety defects in vehicles and equipment.

I hope my testimony has given the committee a useful overview of the breadth of NHTSA's mission, its dedication to achievement of that mission, and the challenges that the agency faces.

Thank you and I look forward to answering your questions.

Mr. RUSH. The Chair thanks the administrator, and the Chair recognizes himself for 5 minutes.

As has been stated, Mr. Administrator, our goal, the goal of this subcommittee as it relates to NHTSA is to look forward and to determine for ourselves what is the best way that we can assist NHTSA in its primary goal of protecting American citizens and American drivers. As I looked at this scenario of this Toyota incident as a framework, I wonder about the safety, the quality or the safety of the automobiles on America's highways in general. The question I have is, what reason can you give the subcommittee that we should not think that the recent Toyota recall that it would not replay itself for any other automobile dealer that manufactures automobiles for America's highways? Can you assure us that this Toyota recall is really just something that is an aberration as it relates to automobile safety?

Mr. STRICKLAND. I will say this, Mr. Chairman, that the Toyota recall, while wide ranging, is I think indicative of how NHTSA uses its authority in a way to get to the bottom of something. When the Secretary of Transportation took office, and at the time it was Acting Administrator Medford, they were observing certain issues with Toyota and they felt so strong about it that Mr. Medford went to Japan to inform Toyota that they did not feel that Toyota was holding up its obligations to inform and interact with NHTSA in a way to address safety concerns and recall concerns. That was the beginning. That effort began actually on December 15th. It was the day of my confirmation hearing, which is a good reason why the entire senior staff regarding defects was actually in Japan and not at my hearing. But better that they be there in Japan explaining to Toyota what they were doing wrong than sitting in a hearing room here in Washington, D.C. When I took office on January 4th, I was updated about these issues, and Toyota was at that point beginning to get the message. I again met with them personally for the first time on January 19th, and I learned about the sticky pedal situation, and they actually executed their stop sale on January 21st. That effort was because of the analysis of the NHTSA, the fast action of the career staff and the leadership of the Secretary of Transportation. So I don't see Toyota as an indicative example of failure, I see it as NHTSA doing its job, and when our professionals use the data, make the case and go forward, we get the results that we need. So I think that Toyota in the wide-ranging recall that it executed, that is the type of response that frankly I would want as administrator and I think that this agency is expecting, and I would hope that in the future that other automakers would do the same in the same set of facts.

Mr. RUSH. Can you give the subcommittee any assurances that the automobiles right now as far as NHTSA is concerned have a level of safety that is greater than what we have experienced with Toyota?

Mr. STRICKLAND. There are two parts of that answer. First, I will go back to the success that we just had regarding the current data. We have the lowest number of deaths we have had since we have been recording this data since 1954. NHTSA is succeeding in its mission.

The second part of your question, do I feel that vehicles are generally safe or will be safe and we won't have any other issue like Toyota, it is the automakers' responsibility to warrant that their vehicles comply with the federal motor vehicle safety standards. That is their responsibility. We are not branding these cars safe. It is our job to enforce and to police the marketplace, which we will do. So as far as I am concerned, the automakers have to uphold their obligation to not only comply with our standards but basically the state of the art. It is my job to make sure that they hold to those standards and this agency will hold that line.

Mr. RUSH. The Chair's time is up.

The Chair recognizes Mr. Whitfield for 5 minutes.

Mr. WHITFIELD. Well, Mr. Strickland, thank you again for joining us this afternoon. As I said in my opening statement, I do think that the agency should be commended because the highways really are safer today than they have ever been from a statistical standpoint. You would agree with that, I am assuming?

Mr. STRICKLAND. Yes, sir.

Mr. WHITFIELD. Now, we have heard a lot—there have been a lot of articles written, a lot of testimony recently that NHTSA has not fulfilled its responsibility, NHTSA is a lapdog for the industry, not a watchdog for the industry, and so there has been a lot of criticism out there about the agency. And as the administrator, how would you respond to that in just a general way? Do you think that criticism is valid or not valid?

Mr. STRICKLAND. No, sir, it is not valid at all. We have been a very active agency since I have taken office. The agency has been very active since Secretary LaHood has taken office. And from my review of the work done, if we are talking about Toyota specifically, this agency opened eight separate investigations over the time period when there were complaints about sudden acceleration. A lapdog doesn't open eight investigations. Now, the goal is for us and our statutory, you know, order is to find any vehicle safety defect that presents an unreasonable risk. Any time a complaint or any data or any anomaly in the number of complaints or what we see from the early warning system, our folks take a look at it, they go forward and they investigate. If we cannot find the defect, we cannot under the statute and force a mandatory recall, but that doesn't mean that we think that vehicle is safe per se. At that point we cannot make the statutory case but we will keep looking, and as we have, we keep looking, and when we find a defect such as in the instance of the floor mat entrapment or the instance of sticky pedal or in the instance of the 2010 Prius brakes, we act and we act quickly. I don't think that the history of our action in this area before I took office or in the 10-year period that a lot of people are looking at, I think that this agency has been quite active.

Mr. WHITFIELD. Now, if you find a defect, then you can require a mandatory recall. Is that correct?

Mr. STRICKLAND. Yes, sir, we can.

Mr. WHITFIELD. And I have heard a lot of discussion about subpoena power, and it is my understanding that you can issue information requests.

Mr. STRICKLAND. Yes, sir.

Mr. WHITFIELD. And do the manufacturers have to respond to that request? Is it—

Mr. STRICKLAND. There is a difference between a subpoena and an information request. I know a lot of people talk about we have subpoena power and yes, we can compel a subpoena for documents. We say we want every document you have on a question, and yes, they have to give that to us. Information requests, they also have to respond, but it has actually a better purpose. We not only get documents, we actually ask direct questions that they give us answers to. It is a much sharper tool and the agency uses that quite frequently. In fact, we sent three queries to Toyota, three large queries, regarding the timeliness of their submission of information to us regarding the floor mats and the sticky pedal, and we sent a large recall query asking Toyota for all their information and answer questions about all of sudden-acceleration incidents, which will be a large amount of documents and data for us to review. If we find in the review of those documents that there is a violation, we will move forward accordingly.

Mr. WHITFIELD. Now, have you found the lack of subpoena power a hindrance to the agency doing its job effectively?

Mr. STRICKLAND. In my review of the work on Toyota, they have been able to—while Toyota has been slow in years past, I will say that they have not been as responsive as my career staff feel they should have been in responses. Since I have been in office, they have been very responsive, and I would hope that that would continue in the future. But in terms of our subpoena, our ability to get information requests issued and responded to, I have gotten no evidence that that has been a problem in terms of getting a response.

Mr. WHITFIELD. Now, I know most of your budget money goes to the States for grants and then the rest is spent basically between behavioral safety and vehicle safety. Is that correct?

Mr. STRICKLAND. That is correct, sir.

Mr. WHITFIELD. And I know in 2005, Congress directed NHTSA to conduct a national motor vehicle crash causation survey, and at that time they came back and they said that 95 percent of crashes were due primarily to driver fault or negligence. Are you familiar with that study or do you have any thoughts on that?

Mr. STRICKLAND. I am tangentially familiar with it. I can't give you song, chapter and verse about the study but I can talk sort of in more specifics about behavior. That is the largest component of risk on the highway, which is the reason why the NHTSA budget is designed to attack the highest risk. Impaired driving, not wearing belts, driving distracted, those are all the hugest risks for everyone on the road today. Vehicle defects are important. We have to address them. They are significant. But in terms of the overall risk profile for highway safety, the behavioral side of the house, so to speak, comprises the largest risk and that is the reason why our program for safety is designed the way it is.

Mr. WHITFIELD. Thank you.

Mr. STRICKLAND. Thank you, Mr. Whitfield.

Mr. RUSH. The chairman emeritus is recognized for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank for your courtesy.

My questions in view of the time shortage have to require yes or no answers.

Mr. STRICKLAND. Yes, Mr. Dingell

Mr. DINGELL. Mr. Administrator, do you believe that the NHTSA made mistakes in its response to the recent Toyota recalls?

Mr. STRICKLAND. No, sir, I do not.

Mr. DINGELL. Should NHTSA have pushed Toyota to initiate recalls earlier than it did?

Mr. STRICKLAND. Sir, we pushed the recalls when we had the evidence of an unreasonable risk defect.

Mr. DINGELL. But yes or no?

Mr. STRICKLAND. The answer is yes, we responded appropriately.

Mr. DINGELL. OK. Thank you. What authorities does NHTSA lack whether under TREAD Act or otherwise with which to address defects in automobiles deemed hazardous to public safety? Please submit that answer for the record.

Mr. STRICKLAND. Yes, sir.

Mr. DINGELL. Now, yes or no, does NHTSA have in place a ranking system for determining the priority of defects investigations, yes or no?

Mr. STRICKLAND. The answer is no, but we rank risk by profile internally. There isn't a one through ten.

Mr. DINGELL. Thank you. Now, there seems to be broad agreement about the need to increase resources available to NHTSA to carry out its mission. Do you need additional resources, yes or no?

Mr. STRICKLAND. The President's budget gives us more resources, so—

Mr. DINGELL. Do you need more?

Mr. STRICKLAND [continuing]. When the President's budget is passed, we will have the resources we need.

Mr. DINGELL. Please submit to us for the record how much more resources you need in what area.

Mr. STRICKLAND. Yes, sir.

Mr. DINGELL. I want that submitted directly to the committee and not through OMB.

Mr. STRICKLAND. Yes, sir.

Mr. DINGELL. Now, in my questioning of James Lentz, Toyota's chief of sales for North America, he revealed decisions to recall Toyota vehicles sold in North America are made in Japan. Do any other manufacturers require that your information for details or decisions made relative to recalls are made in any country outside this United States? Is Toyota unique in that, yes or no?

Mr. STRICKLAND. It appears Toyota is unique, yes, sir.

Mr. DINGELL. All right. It strikes me that this is a bad situation insofar as safety of the American people. Am I correct or wrong?

Mr. STRICKLAND. The system that Toyota uses could be much more efficient.

Mr. DINGELL. By requiring them to have a response to be made in the United States by somebody empowered to comply with our laws. Is that right?

Mr. STRICKLAND. I would feel that if they had somebody in America to respond directly, we could act more quickly.

Mr. DINGELL. Now, I would appreciate it if you would submit to us for the record how this would be corrected.

Now, is there a quantitative difference in response times between domestic and foreign automobile manufacturers to NHTSA's data inquiries, yes or no?

Mr. STRICKLAND. The domestic manufacturers tend to respond faster than the foreign, yes, sir.

Mr. DINGELL. What is the cause for this?

Mr. STRICKLAND. There are several reasons in terms of design of leadership, as you mentioned, and other factors.

Mr. DINGELL. In the case of Toyota, it is because the information has to be procured from Toyota instead of receiving it directly from here. Is that right?

Mr. STRICKLAND. That has been identified by Toyota itself as a problem.

Mr. DINGELL. This is also true with regard to the question of recall?

Mr. STRICKLAND. Yes, sir.

Mr. DINGELL. The decision is made in Tokyo?

Mr. STRICKLAND. That is correct.

Mr. DINGELL. Now, is there a qualitative or quantitative difference in the data provided to NHTSA by domestic and foreign automobile manufacturers?

Mr. STRICKLAND. The quality is—because they are statutorily required, the quality of data is very similar between foreign and domestic.

Mr. DINGELL. Similar?

Mr. STRICKLAND. Similar.

Mr. DINGELL. That doesn't it is the same.

Mr. STRICKLAND. They have different data sets because of their manufacturing and information processes. They comply to our system so they are similar.

Mr. DINGELL. All right. Now, why was it that the Secretary of Transportation and the acting head of NHTSA had to go to Tokyo to get cooperation of Toyota on recalls and production of information?

Mr. STRICKLAND. They were responding to NHTSA and the acting administrator and the Secretary too slowly.

Mr. DINGELL. But they had to go over there. Why did they have to go over there?

Mr. STRICKLAND. Because at the time, the Secretary and the acting administrator felt they needed to go directly to convey that message.

Mr. DINGELL. So they had to convey that message because the message was to urge Toyota to comply more expeditiously with the safety concerns of the Department of Transportation?

Mr. STRICKLAND. That is correct.

Mr. DINGELL. So they had to do it to get more expeditious cooperation from Toyota?

Mr. STRICKLAND. Yes, sir, that is correct.

Mr. DINGELL. Thank you.

Mr. Chairman, I thank you for your courtesy.

Mr. RUSH. The Chair now recognizes Ms. Schakowsky for 5 minutes for questioning.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

On September 1, 2009, proposed rules were put out dealing with the automatic reverse system in windows. Let me quote: "NHTSA proposes requiring automatic reversal systems, ARS, in those windows equipped with one-touch closing or express up operation." In a letter March 10, 2010, sent to you, Mr. Strickland, Henry Waxman, Chairman Rush and myself point out that such windows generally already have auto reverse technology and are usually found in the driver's window where children don't sit, and the intention of the legislation of course was to protect children. But here is really the point I want to make that I find stunning is that you have a chart. This was alternative one of five alternatives that were proposed at that time. This is before your tenure. Alternative one is the one I described, and when it says on this chart cost per window for this remedy supposedly, it says zero dollars, total incremental cost near zero dollars, annual fatality benefits zero, annual injury benefits near zero. So the preferred alternative to protect children was a no-cost, no-benefit solution. I would have thought it embarrassing actually not only to put that in writing but to choose that as the preferred option. I would hope that nothing like that happens again.

Let me describe alternative two, requiring auto reverse windows at all power side windows to meet ECE 21, which is European standards. The cost per window, \$6, which I think most people would find reasonable, the total incremental cost, \$149.4 million. Annual fatality benefits, two, annual injury benefits, 850. So two deaths and 850 injuries, which I think is a pretty modest projection, pretty conservative, could be saved. That was at 6 bucks a window. Again, I want to go back to those families that came talking about children who were choked by these windows. It has got to be maddening to them that this is something that could have been corrected for \$6 and that that is the European Union standard, why isn't it the standard here. So really my request is that we reject this alternative one, but how does that happen? Can we expect that it will not happen any more, that a no-cost, no-benefit solution will not be proposed?

Mr. STRICKLAND. As you know, Representative Schakowsky, I can't engage in a discussion about a rule that is currently being worked on by NHTSA, but I understand that we have received new data from a lot of constituencies including the folks that have worked very closely with you and other members on the Cameron Gulbransen Act and the agency is taking a very hard look at that data, and when the rule is finally promulgated, we hope that we will be—I know for a fact it will be based on sound data and sound science that will be the most efficacious of safety. So that is the one thing I can tell you.

Ms. SCHAKOWSKY. Well, let me make a very strong recommendation that you don't propose rules that have absolutely no effect when the Congress stated very clearly that we want to protect children, and I am sure you will agree with that, so I thank you very much, and I yield back, Mr. Chairman.

Mr. STRICKLAND. Thank you, Representative.

Mr. RUSH. The Chair recognizes the gentleman from Iowa, Mr. Braley, for 5 minutes.

Mr. BRALEY. Thank you, Mr. Chairman.

Mr. Strickland, in your opening statement that we received, the written statement, on page 1, third paragraph, you wrote, "One of the first questions I asked when I became the administrator of NHTSA is whether or our current statutory authority drafted largely in the 1960s and 1970s is sufficient to address the modern automobile and global automotive marketplace." Have you answered that question?

Mr. STRICKLAND. That question is still being worked on by the staff. I have a great deal of experience in looking at consumer product safety statutes from my prior employ, and you have to be very careful in examining these things. We have to make sure that there is a lot in those statutes that are very functional and works well, and we want to look to improve upon a strong authority, and both my legal staff and my programmatic staff are undertaking that work right now. When we have completed that work, we will be happy and excited to share our thoughts with the committee and looking forward to working with you on a going forward basis.

Mr. BRALEY. And I look forward to having that conversation, and let me get back to one of my earlier points about the legacy of the agency that you now head, because in your statement, you noted correctly that safety is the Department of Transportation's highest priority, and you stand by that statement today?

Mr. STRICKLAND. Yes, sir, absolutely.

Mr. BRALEY. And we know that the Office of Defect Investigation, often referred to by its acronym, ODI, is on the front line of defect investigation and prevention as part of the Department of Transportation.

Mr. STRICKLAND. Yes, sir, that is correct.

Mr. BRALEY. And Mr. Whitfield asked you a very appropriate question when he said you have mandatory recall power and you answered yes. Do you remember that?

Mr. STRICKLAND. Yes, sir.

Mr. BRALEY. Can you explain to all of us then why your agency, NHTSA, has not initiated a recall since 1979?

Mr. STRICKLAND. Because you can often influence a recall by going through the initial stages of the process. Most times an automaker will not want to go through the full formal process. It takes approximately a year. It is a public process, and a lot of automakers, realizing they are facing public scrutiny of fighting a vehicle safety defect, and when they know that the agency can prove it, they will go forward and effectuate a voluntary recall. The universe is that most recalls are voluntary—all recalls since that period of time are voluntary but there is a huge number that are influenced by this agency and that is the actual we want you to look at, and we influence well over half of the recalls that happen every year. So that is the real number, Mr. Braley. I think that is indicative of the power of ODI. We don't have to get to a point where the administrator after a year of public hearings and show-cause hearings has to sign an order. Automakers will go forward and take care of that recall voluntarily from ODI's work.

Mr. BRALEY. Well, count me as skeptical that in a 31-year period there has not been an instance where automakers acted responsibly in every particular case responding to demand for recall of a product defect in a 31-year period.



One of the things that I also want to talk to you about is how you described the agency's mission has changed in response to changes in the automotive industry. Do you remember that in your opening remarks?

Mr. STRICKLAND. I don't think I will change it a change in mission but it is a change in how we have to approach the job because of the change in the marketplace. There was a time when America was the world's leader in automotive manufacturing. We are no longer that leader.

Mr. BRALEY. Well, I am talking about something different so I want to make sure you understand.

Mr. STRICKLAND. I apologize, Mr. Braley.

Mr. BRALEY. When I was growing up, it was during the muscle car era where you could tear apart a Chevy large block engine in your basement and put it back together having a basic knowledge of the internal combustion engine. You cannot do that anymore. Would you concede that?

Mr. STRICKLAND. I agree, yes, sir.

Mr. BRALEY. And one of the things that came out during our earlier hearing was this concept of black-box technology that has crash data in it that is driven by complex computer codes, sometimes which the manufacturer is willing to share with your agency and sometimes manufacturers have been very reluctant to share that data or to provide an ability for your own employees to have the keys to the kingdom so that they can download and interpret that information independently. You would agree with that?

Mr. STRICKLAND. Yes, sir, I agree.

Mr. BRALEY. So one of the things that I am concerned about is our own internal committee report for this hearing suggests that your agency's budget dedicated to vehicle safety has remained stagnant relatively over the past 10 years and that your resources are far below the resources that were available for this type of investigation than when the agency was at its height, and my concern is, based upon some of the testimony at the previous hearing, when you have a demand for computer engineers and electrical engineers and people who are not based on mechanical backgrounds, I am concerned that the level of funding and the staffing of personnel within your agency may not be adequate to meet the incredible demands of the changing technology of this automobile industry. Have you done an independent review since assuming responsibility to make your own independent judgment on whether or not that is a critical case we need to address?

Mr. STRICKLAND. I have a couple of responses to that, Mr. Braley. The work of ODI and the automotive engineers that do the work, they are some of the finest in the business in this country, and as the technology evolves, the experience of our investigators and our engineers also evolves. I can give you the quantum number of folks that we have on deck to do the job. We have 125 engineers in NHTSA. We have five electrical engineers. We have a software engineer. We have engineers that are based in our East Liberty, Ohio, facility. We have resources for consultants when we need additional expertise. My understanding from what I know from when I have taken office, there is not a notion that we don't have the

proper expertise to handle today's automobiles. I don't think that is the case at all.

However, recognizing that you can always buttress what you have, the President has provided us resources to hire 66 new people, which we will use to leverage our resources and to buttress and strengthen those folks, in addition to we will be looking at ways how we can do longitudinal studies and long-range studies on these complex systems, as the Secretary spoke about in the prior hearings. Is my confidence that we can handle the current marketplace with our expertise? Yes, we can. Can we be stronger in that area? Of course we can.

Mr. BRALEY. Of the 62 employees you have identified that are in the President's budget request, how many of those do you propose to allocate to ODI?

Mr. STRICKLAND. That is part of the process I am working with the career staff and with the Office of the Secretary to figure out what our resource needs will be in that area. I will be happy to come forward with that information when a decision is made.

Mr. BRALEY. Can you also provide the committee with a breakdown of the people working at ODI with engineering degrees by their names, their job titles and what their particular expertise in terms of being a professional engineer is?

Mr. STRICKLAND. I would be happy to do that, Mr. Braley.

Mr. BRALEY. Thank you. I appreciate that, and I yield back.

Mr. RUSH. The Chair recognizes now the gentlelady from Michigan, Ms. Sutton, for 5 minutes.

Ms. SUTTON. Thank you, Mr. Chairman.

Mr. RUSH. Ohio. I am sorry.

Ms. SUTTON. I am close to Michigan but I am from Ohio.

Mr. RUSH. I apologize.

Ms. SUTTON. That is OK.

Administrator Strickland, thank you for being here. I have a number of questions and they touch on different areas, so bear with me as we shift around.

Beginning with the question of the black-box technology, we have heard a lot about when Secretary LaHood was here he indicated difficulty getting the information that is in those black boxes, that we don't have the capacity, whether it is, as my colleague, Mr. Braley, described, that we don't have keys to the kingdom, which is that information. But when I heard you answer Representative Dingell about having access to data, you said we have access to data in a similar way whether it is Toyota, who keeps information in Japan, and our domestic auto industry. But I was under the impression based on the last hearing that we actually could access information from our domestic auto manufacturers in a way that we can't get from Toyota. So could you clarify for me?

Mr. STRICKLAND. I would be happy to clarify. I took from Mr. Dingell's question about early warning reporting data, which is the quarterly data we receive from all automakers, which is a set template of data that we receive. There are some differences in how they collate and present it but we can understand all of that. That is what I thought he meant.

In terms of event data recorders, you are absolutely right, Representative Sutton. Toyota has a proprietary system that up until

I guess a week or so ago there was only one tool in the country that could be used to read it and we did not have that tool. So if we ever wanted to get information from an event data recorder on a Toyota vehicle, it was very difficult. It is my understanding that Toyota has provided my ODI staff three of these tools to read their event data recorders. I am not sure of the status of whether we have received them all yet but that is my understanding, that Toyota has promised to us that they will provide those tools. So in terms of Mr. Dingell's question, in terms of the set data that comes in to us quarterly from all automakers, yes, it is similar. On your question on event data recorders, yes, there is a difference between the Detroit automakers, which all use a commercially available tool and we have the ability to read it, versus Toyota, where we could not up until a week ago.

Ms. SUTTON. And now that you have this equipment, that was the only hindrance to having access to the black boxes? You can get them? You can always get access?

Mr. STRICKLAND. We can access it, Representative, but we still need a Toyota representative to help decode the data. It isn't fully transparent, even when we download the box. So I still believe that we need Toyota representation to assist us in decoding what happened 5 seconds pre crash and 1 second post crash I believe is the data that is being included in those boxes.

Ms. SUTTON. And is that something that they are required in any way to do or is that just a voluntary offer on their part?

Mr. STRICKLAND. At this point we are undergoing rule. By 2012, if an automaker chooses to have an EDR on board, it has to comport with certain readability and data standards but they don't have to have an electronic data recorder on board. It is not mandated.

Ms. SUTTON. Well, that is interesting. We will have to follow that and see what the consequences intended and others are of that rulemaking.

OK. With respect to what we have been reading, we have been reading in the Washington Post about the relationship between some of those who used to work at NHTSA and going over to work for some of the car companies, and in this moment, Toyota is in the headlines, and so the Post article mentioned that two former NHTSA defects investigators left the agency and immediately took jobs at Toyota managing federal defect investigations. Do you think that there is an apparent conflict of interest here? You know, we are charged, as Members of Congress, with ensuring that the public interest is always the key, and you can understand that people are more than a little concerned when they see sort of that cozy, quick turnover revolving door. Could you comment on that?

Mr. STRICKLAND. Certainly. I have two responses to that, Representative. No ethics laws were broken. You know, Mr. Santucci and Mr. Tinto, who are former employees of NHTSA, when they left their post employment, they were of the level of employee—everything that they did was fully compliant with the current federal laws regarding post-employment limitations. So no laws were broken.

But I am not going to quibble with you on appearance. Perception is reality. And the Secretary was very clear in his statement

to this committee and to Oversight and Government Reform and to the Senate Commerce Committee on this issue. He is committed to strengthening the ethics requirements in the Department of Transportation. I fully support his efforts, and as far as I am concerned, I am going to hold every employee in NHTSA to the highest ethical standard as the Secretary holds everybody in DOT to the highest standard and frankly the Obama Administration has made it a focal point that this will be the most ethical Administration in history. So we are looking forward to working with you on a going forward basis in dealing and handling this issue of appearance and arms-length distance for employees of NHTSA and when they move into a post-employment situation.

Ms. SUTTON. I appreciate that answer because the public trust is critically important in making sure that things are working as they should, and, Mr. Chairman, if I could just indulge in one last question.

During the hearings that we have had in the past with representatives of Toyota and Secretary LaHood, we heard information about how recalls of vehicles had happened in other countries, and these recalls, you know, stemming from what appear to be problems that arose here in this country and led to eventual recalls after much tragedy had occurred. Is there anything that requires auto manufacturers to report to NHTSA problems beyond our borders with vehicles that are sold in this country?

Mr. STRICKLAND. Yes, there are a couple of requirements actually. They have to report to us foreign recalls that involve components used in United States vehicles and they have to also report foreign service campaigns in the vehicles. Now, the question is whether they did this timely. We definitely will investigate those issues. But we receive a lot of data from the early warning system and other obligations from the TREAD Act and we are definitely looking at other ways and other types of information that could be helpful to us in that mission and we are looking forward to working with the Congress and finding ways that we can buttress those abilities.

Mr. RUSH. We see that Mr. Markey has joined the subcommittee. He is not a member of the committee, so the Chair seeks unanimous consent that Mr. Markey be allowed to ask questions of the witness, and hearing no objection, so ordered. Mr. Markey, you are recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman. Thank you for your hospitality.

As you know, the early warning system that I helped to create during the 2000 TREAD Act was intended to provide the Department of Transportation and the public with early information that auto manufacturers receive about safety-related complaints. But the Bush Administration issued a regulation that deemed almost all of the information automakers to be confidential business information. As a result, as far as the public is concerned about my provision back in 2000, the early warning system has become an early warning secret. I have a summary here of the public information contained in all of the early warnings submitted by Toyota in the last quarter of 2008. It tells you that there were seven reports of deaths or serious injuries due to speed control but that is all the

information you get. The public can't learn whether those reports relate to sudden unintended acceleration. They can't learn what happened and they can't learn whether any consumers made complaints about similar problems that didn't result in a serious injury or death.

Do you agree that the public versions of early warning system data don't really tell the public anything specific or useful about potential automobile safety problems?

Mr. STRICKLAND. Mr. Markey, the one thing I would like to start off with saying is that the NHTSA databases and the information we provide are some of the most transparent in government, and we have been noted by the federal government about our data sources that we provide.

In terms of the early warning system, as far as the Obama Administration is concerned, as far as I am concerned as administrator, the more transparency we have, the better. I definitely would like to have a dialog with you about the early warning reporting system and your thoughts on how we can improve transparency going forward.

Mr. MARKEY. Now, consumers can report safety complaints to NHTSA as well and these reports are made public. Does it make sense to you that when a consumer reports a safety problem directly to NHTSA, it goes into a publicly searchable database, but when a consumer not knowing that they could complain to NHTSA instead reports the safety problem to a car company, that it becomes confidential business information without a requirement that the public learn about it? Do you think that is right or do you think that that information should as well have to be made public because it is given to NHTSA as part of a public report?

Mr. STRICKLAND. I clearly see that inconsistency. This Administration believes in transparency. I would happily talk to you on a going forward basis how we can make our databases more transparent.

Mr. MARKEY. Do you think that information should be information that the public, me as an owner of a Toyota Camry, should I have had that information?

Mr. STRICKLAND. That information should not be hidden, in my personal opinion. However, there are other things that should come into play and I would be happy to talk to you on a going forward basis.

Mr. MARKEY. When President Clinton signed the Act into law, he directed the Department of Transportation to implement the early warning system in a manner that ensures maximum public availability of information. That clearly hasn't happened. So my goal is to work with you, sir, in order to accomplish that goal. We thank you for taking this job, by the way.

Mr. STRICKLAND. Thank you, Mr. Markey.

Mr. MARKEY. And we have enjoyed working with you over all the years, especially on the fuel economy standards and your work in the Senate.

Let me ask if I may one final question. Although NHTSA can undertake a mandatory recall, doing so takes a great deal of time and can require you to go to court to prove the existence of a safety defect. There are times, however, when taking that long costs lives.

As you know, since you were the lead staffer in the Senate 2 years ago, Congress gave the Consumer Product Safety Commission the authority to quickly inform the public of an imminent product safety hazard, even though the formal recall process was complete. Do you think that sort of authority could help NHTSA more effectively protect and inform the public of serious safety problems, and will you work with us to develop such a provision?

Mr. STRICKLAND. The imminent-hazard authority, Mr. Markey, is in several of our sister consumer safety agencies. The Federal Rail Administration, for example, has this authority and it has proven to be very helpful to them. I look forward to working with you and having a further discussion on this authority. It has proven very successful in other areas in consumer protection and it may bear fruit for NHTSA as well.

Mr. MARKEY. Thank you, and our country is very fortunate that you were willing to accept this position.

Mr. STRICKLAND. Thank you, Mr. Markey. That is very kind.

Mr. MARKEY. Thank you, sir.

Mr. RUSH. The Chair will ask the indulgence of the witness just for a few more minutes. The Chair will authorize a second series of questioning, and the Chair recognizes himself for 2 minutes.

NHTSA's budget for vehicle safety programs has been stagnant, as was mentioned earlier, for the past 10 years. From my perspective, this year's budget request is down a few million dollars from the year before. ODI, which focuses its enforcement activities on new cars sold within the last 5 years, has a budget of less than \$10 million to police a fleet of 80 million vehicles, and according to the Chicago Public News, adds up to about 10 cents a car. The budget for rulemaking has suffered as well. It has delayed major rule-making efforts to the point that Congress has been compelled to legislate mandates for rollover standards and for child safety. I know that there is an increase of about 66 new personnel but if you get more resources for your safety programs, where would you focus those increased resources?

Mr. STRICKLAND. Well, Mr. Chairman, you know, the safety mission is not simply in the ODI or the vehicle safety office. It is actually our entire mission. It is the behavioral side as well. And the President's budget provides resources for us to accomplish our mission with the new resources for those personnel. We will take a hard look at those 66 personnel and deploy them at the places where we need not only to improve and strengthen the Office of Defects Investigation but in other places where we can also help further our safety mission in the most efficient way.

In terms of resources overall, we have accomplished our mission with the resources we have had. The President has given us a budget that gives us more resources to do more and we will use that for the safety mission.

Mr. RUSH. This Congress has to prepare a budget. The Congress has to approve a budget. Would you have any objections if we gave you more than a budget for 66 employees?

Mr. STRICKLAND. Mr. Rush, the President's budget helps us accomplish our mission. If the decision of the Congress is to provide us more resources, we will use them judiciously for the purposes of improving safety.

Mr. RUSH. Sounds like a good answer to me.

Mr. Whitfield for 2 minutes.

Mr. WHITFIELD. I would just say, I don't know how much more we have to give you, but thank you.

Mr. RUSH. With that said, and seeing no more members seeking recognition, Mr. Administrator, you have done an excellent job. We thank you very much. And again, please forgive us but our duties have taken us away and so we weren't able to be as prompt as we wanted to be beginning this hearing, so thank you for your patience.

Mr. STRICKLAND. No, thank you, Mr. Rush. It has been an honor. Thank you, sir.

Mr. RUSH. Thank you.

Mr. STRICKLAND. Mr. Whitfield, thank you.

Mr. RUSH. The second panel will please be seated at the desk. The Chair thanks the second panel for your patience, and again, we want to reemphasize our apologies to you for our scheduling. It has been fairly horrendous and it has taken us away from our scheduled duties. And so please accept our sincere apologies.

The Chair wants to introduce the witnesses now that comprise the second panel. On my left is Ms. Joan Claybrook. She is the former administrator for the National Highway Traffic Safety Administration, and Ms. Claybrook, we want to welcome you here once again. Seated next to Ms. Claybrook is Ms. Ami Gadhia, and Ms. Gadhia is the safety policy counsel for the Consumers Union, and Ms. Gadhia, we want to welcome you also to this hearing. And lastly we want to not just recognize but we want to also say hello to our former colleague, who was a member of this House, a very able Member representing the State of Oklahoma for many years, a very bright and intelligent human being, the Hon. David McCurdy, who is the president and the CEO of the Alliance for Automobile Manufacturers. Dave, it is good seeing you again and we welcome you again to this subcommittee hearing.

Now we want to recognize for 5 minutes for the purposes of an opening statement the illustrious Ms. Joan Claybrook.

**STATEMENTS OF JOAN CLAYBROOK, FORMER ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AMI V. GADHIA, SAFETY POLICY COUNSEL, CONSUMERS UNION; AND DAVE MCCURDY, PRESIDENT AND CEO, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS**

**STATEMENT OF JOAN CLAYBROOK**

Ms. CLAYBROOK. Thank you so much, Mr. Chairman.

I am the last person to have required an auto company to do a recall, and that was 31 years ago, and I would like to say that when you do find a defect, the auto companies will often do a recall and you do not have to go to court. But sometimes you do have to go to court, and I think that there has been, and the Toyota case, I think, elaborates on this. I think there has been a misconception on what a defect is, and in the last case that was litigated by the Department of Transportation on this issue, the federal Court of Appeals made several important comments which I would just like to mention to you. This is not in my testimony. I hope my whole

testimony will be in the record. But I think that this is a very important issue. It has come up now several times in recent days.

What the court said was, to find a defect within the meaning of the Act, the NHTSA must show that the vehicle itself is defective whether the defect manifests itself in performance, construction, components or materials of the automobile. In other words, it can be a performance defect and they do not have to show that there are five or 500 or 10,000 consumer complaints that have arisen, and often in fact those complaints are not allowed in court as evidence. So if the agency relies on it, then it is not going to have them find a successful result.

Judge Leventhal, who was a Court of Appeals judge in a different case, said that a determination of a defect does not require any predicate of identifying engineering, metallurgical or manufacturing failures. A determination of a defect may be based exclusively on the performance record of a vehicle or component.

Now, I think that this changes if you look at the Toyota case, and I know this is not just about Toyota but it is about the agency. It changes the way the agency should approach these defect investigations, and I do think that the agency has fallen into a trap, if you would, with the Toyota case and others, where it seems to be accepting the burden of having to define what the defect is in terms of the failure of performance. That is the responsibility of the manufacturer. The manufacturer put that vehicle together. They did the design drawings. They make the profit from it. And how this happens is their responsibility. If it has a failure in performance, the agency can find a defect and the company has to fix it and the company has to figure out what that fix is. That is what the courts have said, and I think it is very important to make that clear.

My testimony that I submitted has seven points that I would like to just mention very briefly. One is that there has been a low priority on enforcement in the agency, a lack of resources, which you all have discussed, but there is another key issue which is that a court of appeals in the mid-1980s found that consumers did not have authority under the existing statute to sue if a defect was not found by the agency. In other words, if a case is closed, there is no authority of consumers to go to court. There is authority for consumers to go to court if a rulemaking decision is made that we don't think is proper, and we in fact have gone to court at Public Citizen on many, many occasions and helped to make the statute work better because of the cases that we have brought. We have brought them on uniform tire quality grading, the tire monitoring system for the amount of inflation in the tire, on the early warning system, which was kept secret, totally secret. We at least got part of it revealed in two different lawsuits. So we can sue when there is a rulemaking issue. We cannot sue when there is a defect disclosed, and I think that changes the balance of thinking by the administrator. There is no fear that if they close a case that it is finished, and what the court there said in the court of appeals in the mid-1980s was that the agency had the discretion to figure it out according to their resources and so in every case that NHTSA closes, it says it closes it on the basis of resources. They just are mimicking the words of the court decision. But the fact is that we



should have that authority because we are not going to bring cases we don't think we can win because that is a waste of our time and energy, and I think there ought to be a better balance of power because if the agency finds a defect, then the company gets a change to get its words and say what it thinks, and if we bring a case, they can intervene.

Secondly, the agency has been engaged in excessive secrecy. The early warning system, which Mr. Markey talked about, is a good example, and as I said, we had to sue to make it available. We don't even know how many times Toyota in the recent cases filed an early warning report to the agency and what it said and how many consumer complaints it had and how many warranty claims it had and how many field reports it had. All of that is secret. And if that were more open, then the public would have access to it and they could help the agency by letting them know when they had a problem, but their web page in addition is a mess, so if you went to the web page to try and figure out whether there have been early warning reports on the particular vehicle that you are driving that is not working right, you wouldn't be able to figure it out. I wouldn't be able to figure it out.

The third point is that I think the penalties that the agency has authority to impose are insufficient. First, they should have the criminal authority for knowing and willful violation of the Act, which you put in the CPSC law most recently a year ago. It is in the FDA law. It is many of the sister agency laws. I think the same should be available for NHTSA. And in addition, the penalty for the civil penalty is \$16.2 million, which is a flyspeck for companies like Toyota. They spend that much in half a day on their communications activities and staff. So we think that it ought to be \$100 million because that is something that they would pay attention to.

Fourth, the agency is drastically underfunded. The total budget for the motor vehicle program for the whole United States is \$132 million in this agency. That is it. And it is not much above what it was when I was there just individual dollars, and in terms of inflation, it is way below. It has been drastically cut. By the way, those 66 new FTEs that were being discussed, it is actually only 33 full-time ones. So that is not really 66. And in addition, they have allocated them. Twenty-three are for operations and research, eight for rulemaking, four of them for enforcement. So that is the tentative allocation. Now, they may be changing that and reconsidering it but that is what was in the budget. So the agency cannot handle the programs, the rulemaking programs which are critically important, as important certainly as the defect enforcement because of lack of capacity.

Information gathering and the data systems are totally insufficient. They should have been funded at four or five times what they are now, given the design of these systems back when they were first created in the 1970s. I think that a key issue that has come up at this hearing to some extent is the black box. It is a voluntary standard. Voluntary standards don't work as evidenced by the fact that Toyota, you know, its system is not even being made available and the deadline for compliance was supposed to be 2010. It was extended to 2012, so it is delayed. It is a 5-year lead-in for a voluntary standard, which is ridiculous. We think that the black

box ought to be mandatory and that the data, have a standardized downloading for the data so that the police don't have to have seven different computers depending on if it is a General Motors car or Toyota or Nissan or Mercedes. They ought to have one standardized downloading system. And I think that a way that the agency could be drastically enhanced, it is very exciting, would be to have that black-box data when it is downloaded when a crash occurs, a serious crash, a tow-away crash or an airbag crash, to have that data go to NHTSA, have NHTSA set up a data system to receive it so that that can be the basis for their evaluation of defects and evaluation of safety standards, and the data would be voluminous and it would be fabulous and far more than what they have today, and it would be much less expensive. So I hope that the committee will consider that issue as well.

The new safety standards should come out of some of the work that goes in the defects area. For example, for years NHTSA has tested cars and seat backs have failed when they hit them in the rear at 30 miles an hour and yet they have never issued a standard to upgrade that seat back. The very dangerous circumstance of seat back fails, you can't control the car, and also many people become quadriplegic and paraplegic as a result. But in the Toyota case, I think a brake override standard and a new accelerator standard which was issued in 1973, it is not even electronic that is completely irrelevant to the current model should be done.

And then finally, I believe that conflict-of-interest rules need to be strengthened as we have mentioned and I would mention that NHTSA has a test facility in Ohio but it is owned by Honda Motor Company. I created this back in the 1970s when it was owned by the State of Ohio. Now it is owned by Honda because they bought it. And I think that that should be changed. They should change their facility and there are some opportunities for doing that.

Thank you very much, Mr. Chairman. I have several submissions for the record. I am sorry that I am slightly over on my time.

[The prepared statement of Ms. Claybrook follows:]

***Statement of Joan Claybrook, President Emeritus, Public Citizen, and Former Administrator, National Highway Traffic Safety Administration***

***Concerning the Performance of the National Highway Traffic Safety Administration and Recommendations for Legislative Improvements***

***Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce***

***U. S. House of Representatives  
Washington, D.C.***

**March 11, 2010**

Mr. Chairman, members of the Committee, my name is Joan Claybrook. I am a former Administrator of the National Highway Traffic Safety Administration (NHTSA) and President Emeritus of Public Citizen, a national public interest organization. I appreciate the invitation to testify today on the performance and decisions of NHTSA on motor vehicle safety issues and the opportunity to make recommendations for improvements.

To start, let me say that one of the pleasures of working for or in association with NHTSA is the opportunity to support its clear mission of saving lives and reducing fuel use on the highway. The rewards of this work have kept many agency staff working there for years. Also, the statute creating the agency in 1966 with amendments over the years is strong and supports effective leadership.

Yet NHTSA is the poor stepchild of the U.S. Department of Transportation (DOT), responsible for addressing 95 percent of the transportation-related deaths with only one percent of the DOT budget. This has severely hampered the agency's effectiveness.

NHTSA has been viewed by the motor vehicle industry for years as a lapdog, not a watchdog. The agency is heavily dependent on the manufacturers it regulates to cooperate with the agency and supply information. While NHTSA sends defects investigation letters requiring response, for decades it has not sent a subpoena or letter requiring a sworn response under threat of criminal penalty. It has not asserted its hefty authority through demanding information from manufacturers, suppliers and dealers, through extensive defects testing at its Ohio facility, through hiring the best experts worldwide or

contacting consumer lawyers and their experts, or through alerting consumers to supply information about their experiences on the road. Auto companies, including Toyota, treat the agency with contempt, failing to supply requested information, delaying actions requested, arguing against reasonable agency proposals, attempting to mislead the agency, gloating when the agency backs off of proposed actions, and boasting about their influence over the agency. This is a sad state of affairs for a crucial, vitally important and potentially potent safety regulatory agency. NHTSA's new leadership must change the agency's performance and results.

This new leadership gives us great hope that a number of agency shortcomings to be tackled. And this hearing today is just what is needed to make sure that the agency is doing its job and has the capacity to do so.

Today I will recommend seven types of legislative and administrative remedies for the agency to be much more effective, to be a watchdog instead of a lapdog, and to save the lives it should be saving, as has been tragically highlighted by the Toyota cases.

- 1. Low Priority for Enforcement.** The agency leaders for too long have given low priority to its enforcement programs, and as a result, cases are opened and closed routinely with minimal investigation, there are no clear criteria by which the agency determines its priorities in investigating cases, and the public must be able to seek judicial review of agency enforcement decisions as it can already for rulemaking final decisions.
- 2. Agency Secrecy Makes Public Oversight Difficult.** There is little opportunity for public oversight because of excessive secrecy, including with the Early Warning Reports program created by the TREAD Act in 2000 under this Committee's auspices. The Early Warning program has not served the public need.
- 3. Penalties are Insufficient to Deter Violations.** The penalties in the law are insufficient to deter manufacturers from refusing or failing to admit their vehicles contain a defect and then recalling them.
- 4. Agency Resources Need to be Drastically Increased.** The agency resources to handle the volume of vehicle defect problems each year are pitiful and they need to be drastically increased.
- 5. Information Gathering and Data Systems are Insufficient.** NHTSA's information gathering and data systems are woefully under-funded and inadequate for issuance of safety standards and enforcement.
- 6. New Safety Standards Should Result from Investigations and Testing.** The enforcement office should regularly recommend to the leadership new or upgraded safety standards based on findings from its investigations.
- 7. Conflict of Interest Rules Need to be Strengthened.** The agency needs to review its conflict of interest rules to determine whether they need to be tightened based on the

issues raised with former NHTSA personnel leaving the agency to work for Toyota and other auto companies.

### **Low Priority for Enforcement**

The standards and defect enforcement program at NHTSA is often a stepchild until a big case like Firestone or Toyota blows up and then a laser beam of attention is focused on it. But most of the time NHTSA administrators worry about setting standards for safety and fuel economy, and state grant in aid programs which dominate the agency's budget.

An important tool for assuring keen oversight of NHTSA enforcement decisions is the ability of outside parties to challenge them in court just as they can challenge final safety standards in court. The law needs to be amended to grant this authority. The statutes of many other agencies include such authority (Atomic Energy Act, The Clean Air Act, the Safety Drinking Water Act, the Endangered Species Act and more). It is clear that it is needed for the National Traffic and Motor Vehicle Safety Act as well. I can testify from my own personal experience that the agency takes great care with issuance of safety rules because it knows it can be challenged in court. It should give the same premium consideration to enforcement actions.

Reviewing tens of thousands of consumer defect complaints, gathering detailed information about a problem with particular make/model vehicles, asking the manufacturer for more specific information and analyzing all the data is a daily task for enforcement engineers and investigators to whom little attention is paid. The small size of the staff, the huge size of the manufacturers regulated, the imbalance not only of resources but of knowledge about particular problems between manufacturer and regulator, the pressure on NHTSA engineers to "get it right" or face the ire of supervisors and manufacturers, all combine to make agency staff very cautious and often secretive.

But as the U.S. Department of Transportation Inspector General emphasized in a report on his audit of NHTSA's defect investigation programs in 2004, the agency needs to "ensure consistency in recommending and opening defect investigations in order to ensure the highest priority cases are investigated." This means not only effective procedures but also regular reporting to and review by the Administrator to assure the agency is the government cop on the corporate beat.

Over the years the defect program has become increasingly complex and hard for outsiders to fathom. To begin a defect review the agency used to conduct an engineering analysis, produce a public list each month of ongoing cases, and if warranted open an investigation with a press release. Then it added additional preliminary steps, didn't tell anyone, and stopped producing monthly lists of vehicles with potential defects being considered. Keeping this information secret means the public is not alerted so citizens can take measures to protect themselves, and it means they will not know to supply crucial information to the agency about their own vehicles.

NHTSA has tried in the past to limit recalls regionally (until challenged by consumer groups). In the case of the Lexus in 2007, NHTSA allowed an equipment recall for floor mat replacement without requiring vehicles to be brought in and inspected by dealers, saving Toyota \$100 million according to a Toyota July 2009 power point presentation. Some companies (Toyota in October 2009) conduct a recall but in documents filed at NHTSA claim the problem is not a safety related defect. And the agency does not respond. The agency has the authority to review recall letters a company sends to consumers to be sure it truly alerts the recipient to the dangers and encourages them to get repairs made. Many letters, however, appear not to have been reviewed because they are designed to be so bland that the consumer is not likely to respond. This protects the manufacturer's liability and restrains costs.

Also, the agency used to routinely ask companies to conduct voluntary recalls when the top engineering staff believed a safety defect was involved. Some companies agreed and others didn't. After GM raised a stink about such a request involving the CK pickup truck with dangerous side-saddle gas tanks in the 1990's, the agency created so-called peer review panels that include even legislative staff who have to sign off on such a request before it is made. These panels meet infrequently, delaying action. They should be abolished. The head of the Enforcement should have authority to approve of such requests.

Another tactic the agency should not tolerate is a company substituting so-called "service campaigns" for full safety recall campaigns. This may be appropriate in very limited circumstances where there is no safety issue involved, but once one company does it the others all try to do so as well.

#### **Agency Secrecy Makes Public Oversight Difficult**

Over the years NHTSA has gotten more and more secretive. Often simple requests require the filing of a Freedom of Information Act (FOIA) letter which is more time consuming for the agency to process but which at least must be answered and can be challenged in court. Thus consumer organizations now routinely file FOIA requests instead of informal ones. All of that of course takes time and resource by the requesters and the governments. The Internet has helped the public get information about docket comments on rulemaking and about safety defect and enforcement final decisions. But more and more manufacturers are requesting confidentiality for information submitted, and too often the agency grants the requests. It also takes a long time to process some of the confidentiality requests.

A major program the Congress intended to be public but NHTSA fought to keep secret is the Early Warning Report program information submitted quarterly by manufacturers by make and model and alleged defect when they learn of a death or injury. It took effect in 2004.

During debate on the TREAD Act, reported out of this committee in 2000, Chairman Billy Tauzin and Representative Ed Markey had a colloquy on the House floor assuring

the early warning information would be public. In the signing statement for TREAD, President Bill Clinton said the information should be public. The NHTSA legislative counsel John Womak wrote a memo after the law was enacted stating the information would be kept public. The first rulemaking notices indicated the information would be public. But guess what? In a jujitsu move, the agency amended its confidentiality rule and decided the early warning notices from manufacturers would be secret.

Public Citizen had to sue twice to get only some of the information. The public now has access to the make, model, alleged defect and the number of death and injuries. But still kept secret by NHTSA are the number of warranty claims, the number of consumer complaints, and the number of field reports about that make/model vehicle and alleged defect. Not even required to be reported are the number of law suits filed on that vehicle. NHTSA says such information is confidential business information. Yet for years it has released such information on particular make/model vehicles in final reports on safety defect investigations. Recommendation: All of the early warning information should be made public.

As the Toyota cases make clear, even excellent letters or defect investigation petitions from consumers that cause the agency to take a look at an issue can be dismissed by NHTSA, but without the early warning information the public cannot weigh in and be effective advocates in response. We still don't know whether Toyota filed early warning reports on the vehicles NHTSA initially reviewed for sudden acceleration following receipt of letters and petitions, or whether they were filed (as they should have been) before the Toyota recall announcements on a variety of vehicles for sudden acceleration.

In addition, NHTSA has kept secret information about what early warning reports prompt the agency to initiate informal investigations or inquiries. They simply are not made public like other agency defect investigations. There is no reason for this secrecy and all of them should be made public.

The DOT Inspector General in its 2004 report criticized the agency for its many mistakes in creation of a computer program to manage the early warning reporting that cost the agency \$9.4 million through 2004 and another \$11.5 million to operate and maintain from 2005 through 2009. The computer program is called ARTEMIS. As the Inspector General reported, "ARTEMIS (Advanced Retrieval(Tire Equipment, Motor Vehicles) Information System) cannot perform more advanced trend and predictive analyses that were originally envisioned as being needed to identify defects warranting investigation...." If this program is not helping identify potential defects, what criteria does the agency use to do so? This question needs to be answered.

Further, the NHTSA web page on early warning is almost impossible to use, particularly for a consumer. Whatever the reason, it needs to be made user friendly with easy summaries by type of vehicle and type of alleged defect. Let's finally administer this program as Congress originally intended to not only help the agency do its job but to save lives as well.

### **Penalties Are Insufficient to Deter Violations**

The current penalties under the NHTSA statute are primarily civil. However, there is a useless criminal provision that should be rewritten. Under the TREAD Act, which added section 30170 to Title 49, violations that include falsifying or withholding information with the specific intent of misleading the Secretary of Transportation with respect to motor vehicle or equipment safety related defects that have caused death or serious injury are subject to a fine under 18 U.S.C 1001, the government wide criminal law, and/or up to 15 years in jail, except it contains a safe harbor provision under which criminal penalties do not apply if the person did not know the violation would result in an accident causing death or serious injury and the person corrects any improper reports.

This section too narrow and fails to cover elements of the NHTSA law other than defects. But the safe harbor provision also essentially negates the criminal penalty and raises the question about whether 18U.S.C. 1001, which does not have the safe harbor, could separately be applied. This section should be rewritten to apply criminal penalties for any knowing and willful violation of the NHTSA statute, similar to the provision this Committee wrote in 2008 for the Consumer Product Safety Commission Act (CPSA). The Food, Drug and Cosmetic Act has contained criminal penalties for years. Its office of Criminal Investigations has a \$41 million budget. It's amazing that NHTSA does not have authority to impose criminal penalties given that an individual negligent driver can be prosecuted for vehicular homicide for killing one person.

Civil penalties with a maximum of \$16.4 million dollars apply to all other NHTSA statutory violations. This is hardly enough to influence the decisions of multinational motor vehicle manufacturers. The TREAD Act increased NHTSA's maximum civil penalty from \$1 million to \$15 million (increased to \$16.4 for inflation). Unfortunately NHTSA lax leadership is revealed by its failure to impose even the penalties is currently is authorized. The agency did not impose any penalties from 2004 to 2008 and the maximum penalty it has imposed is \$1 million dollars!

The law should be amended to remove any maximum civil penalty and increase the current \$5000 per violation penalty to \$25,000 as in the EPA law. By comparison, one defense contractor, BAE Systems, was recently fined \$400 million in a decades old case, for misleading the Defense and State Departments about compliance with the Foreign Corrupt Practices Act.

Increasing these penalties for violations of the Act will deter manufacturers from failing to obey the law and reduce the load on NHTSA that too often finds itself "urging" manufacturers to comply.

### **NHTSA's Resources Need to be Drastically Increased**



NHTSA is the poor stepdaughter in DOT. It is responsible for addressing 95 percent of transportation-related deaths but has only 1 percent of the DOT budget.

Its motor vehicle safety budget is \$132 million for FY 2011. This is totally insufficient to conduct research and prepare regulatory analyses for issuance of complex motor vehicle safety standards, test sufficient numbers of vehicles to assure their compliance with agency vehicle safety standards, carry out the New Car Assessment Program under which new cars are crash tested and the information listed on the price stickers of new cars in the show room and also published on NHTSA's web page, review and evaluate tens of thousands of consumer complaints, manage the Early Warning Reporting program, investigate vehicle safety defects require recalls.

For FY 2011, NHTSA's motor vehicle program request is \$5 million less than Congress enacted for FY 2010. By comparison, grants to the states total \$620 million, an increase of \$14 million over FY 2010. An additional \$117 million is allocated for highway safety research. These two programs total 84 percent of NHTSA's budget. The motor vehicle program accounts for only 15 percent.

The motor vehicle safety budget should be increased by \$100 million dollars. It has been declining for years and has crippled this important agency as the Toyota case reveals. The Office of Defects Investigation has only 57 employees and 18 investigators. It lacks crucial electronics and software expertise needed to oversee today's vehicles. Not only is there a gross imbalance in resources between NHTSA and any company whose vehicle is being investigated, there is an imbalance in knowledge and expertise which is exacerbated by lack of funding. As a result, in addition to being ill-equipped to conduct thorough investigations of Toyota's sudden acceleration defects, it regularly closed promising inquiries after Toyota refused to acknowledge any defect. This type of agency failure must be changed. And adequate resources for NHTSA is one of the key to that change.

#### **Information Gathering and Data Systems are Insufficient**

NHTSA's databases are woefully under funded and inadequate for standards setting and enforcement. The original intent of the National Accident Sampling System (NASS) was to conduct about 20,000 accident investigations a year. It now conducts only about 4,000 at a cost of about \$12 million annually, with the result it is unable to identify key problems from its data.

In addition to the fatality data system (a census of all motor vehicle fatalities occurring each year) and NASS that need vastly increased funding, there is a potential vast new source of data the agency has not attempted to tap that could be readily available. That is the data from Event Data Recorders, or black boxes, now in most motor vehicles that record data when a crash occurs. But there are great variations in the existing systems which would make creation of a data base impossible.

NHTSA issued a voluntary standard in 2007 that takes effect in 2012. It requires a minimal amount of data to be captured in a crash. But it is totally insufficient and should be rewritten. The data collected under a mandatory standard should include all important crash data and could form the basis for a new NHTSA data base from real world crashes—a very exciting prospect. It would also have to require a single, uniform interface system for downloading the data (now each company's system has a different downloading method causing great confusion) so that the police would need only one computer to do so. Also the standard should include protections against exposure to fire, water submersion, and tampering, and prohibit on/off switches. It must also include enhanced recording of rollover crashes (currently only one event is recorded when multiple air bags deploy) and rollovers usually involve 2 or more rolls.

I cannot emphasize enough the potential treasure trove of safety information inexpensively collected to significantly enhance NHTSA's analytical capacity. NHTSA should be required to issue a mandatory safety standard and to establish a public repository/database for EDR case data with personal identification information removed, and state and local authorities should be required to routinely collect EDR data in all fatal, injury and tow-away crashes and forward it electronically to the NHTSA database.

The event data recorders are also an issue in the Toyota cases. Toyota, unlike U.S. manufacturers, has made it almost impossible to secure black box information. It has not made available any downloading systems, saying the one it had in the U.S. was a prototype. To the best of my knowledge, Toyota has not made available to NHTSA any black box information about its vehicles involved in sudden acceleration crashes, making it more difficult for the agency to do its job. In the midst of the storm over Toyota's posture on the sudden acceleration recalls, the company announced it was delivering three computers to download the black box information to NHTSA and that 100 systems would be available for commercial application in April. However, it is very likely that the data collected by the Toyota systems is minimal given the company's penchant for secrecy.

#### **New Safety Standards Should Result from Investigations and Testing**

In the course of conducting safety enforcement and consumer information New Car Assessment crash tests and defect investigations, agency staff often learns about vehicle failures that can be corrected with new safety standards. It appears that such information is not effectively transmitted to the safety standards section of the Agency or that it is not treated seriously if it is transmitted. For example, front seat backs have failed in a number of agency rear impact crash tests, yet a safety standard to prevent such failures has never been issued.

Likewise, the Toyota cases bring to light a number of safety standards that should be upgraded or issued. The **accelerator standard** was issued in 1973, years before electronic throttles were installed but which are now common in all motor vehicles. This standard needs to be seriously upgraded to address electronic accelerators.

The **brake override** system that has been prominently mentioned in the Toyota floor mat recall is another needed standard given the prevalence today of electronic throttles. Toyota said it is installing the brake override in many of these vehicles when they are brought in for the floor mat fix. NHTSA should issue a safety standard as rapidly as possible to assure the service brake overrides inputs to the accelerator control systems.

Another issue raised by the Toyota cases is the need for **standardization of ignition shut-off systems**. Reports of tragic Toyota sudden unintended acceleration cases have revealed the difficulty for drivers in shutting off the engine. NHTSA should require standardization depending on whether the shut-off mode uses a traditional key, instrument panel button or switch, or an electronic key fob.

In addition, the Toyota case reveals the need for a safety standard for motor vehicle electronics, given that many safety-critical systems for vehicle operation and control are now electronic. NHTSA should set minimum **safety standards for electronic systems** and for **protection of those systems from electromagnetic interference (EMI)**.

There are of course other safety standards NHTSA should address but these are key ones that have been given prominence by the Toyota recalls.

#### **Conflict of Interest and Ethics Rules Need to be Tightened**

While neither NHTSA nor DOT usually set ethics rules that are different from the government-wide rules, we urge the Secretary of Transportation to consider the need to impose tougher standards and stricter scrutiny for the agencies that protect the public safety, particularly in light of the two Toyota employees who came to the company from NHTSA as well as the large number of high level NHTSA/DOT staff who now work directly for the auto industry. In particular, the focus should be on engineering staff that can move immediately from the agency to a regulated company as long as they don't work on any matter they handled at the agency. It should also consider a cooling-off period longer than two years for senior agency or department personnel leaving to represent the auto industry.

I would also note that NHTSA rents space at a crash testing now owned by Honda Motor Company. It originally was owned by the State of Ohio when I established our testing work at the facility. It is now time to avoid the conflicts inherent in this arrangement and find new facilities that are not involved with regulated companies.

Thank you Mr. Chairman and members of the Committee for the opportunity to testify on these important matters today.

Mr. RUSH. The Chair by unanimous consent will accept the extraneous material and your full statement into the record.

Ms. CLAYBROOK. Thank you, sir.

Mr. RUSH. Ms. Gadhia, you are recognized for 5 minutes.

#### **STATEMENT OF AMI V. GADHIA**

Ms. GADHIA. Thank you. Chairman Rush, Ranking Member Whitfield and members of the subcommittee, thank you for the opportunity to testify on the road ahead for NHTSA. I am Ami Gadhia, policy counsel with Consumers Union, the nonprofit publisher of Consumer Reports.

The recent Toyota recalls involving sudden, unintended acceleration have focused national attention on safety problems. Consumers Union believes that addressing this formidable challenge demands a coordinated effort by the government, automakers, the public and independent consumer groups such as our own. We recommend the following government actions to improve our auto safety net.

Consumers Union believes government regulators could have moved more aggressively to pursue sudden, unintended acceleration and to protect consumer safety. Various news reports and our own analysis of documents from the investment point to a pattern of missed opportunities. NHTSA and Toyota were aware of unintended-acceleration complaints involving Toyota models as early as 2003 when the agency received a petition to investigate the problem. We are pleased that NHTSA is now looking into potential electronics issues behind the events involving Toyotas and we eagerly await the agency's findings. However, we believe that NHTSA can take actions now to improve safety.

First, we would like to see improved public access to safety information. NHTSA's Office of Defects Investigations collects complaints and data about autos from the public and manufacturers in two separate databases: the consumer complaints database and the agency's early warning reporting system. They both have limitations, and the data they provide are not integrated, making it more difficult for investigators to spot issues and for consumers to find information. Consumers shouldn't have to visit different sites to see all of this information or be forced to search it using tools that are less than user-friendly. All complaint information should be visible by a single easy-to-use consumer-facing site. NHTSA should also initiate a program to raise public awareness and invite more drivers to participate in data gathering. The more public complaints there are to analyze, the greater the change that problems such as unintended acceleration will be identified at an early stage.

Second, NHTSA should promulgate certain safety regulations to prevent unintended acceleration in all automobiles. They should require that cars be able to stop within a reasonable distance with a sustained press on the brake pedal even when the throttle is fully open. One method to reduce stopping distances is smart throttle technology that allows the brakes to override the throttle. Other methods may also become available. To us, the most important safety feature is to ensure that a vehicle can stop within a reasonable and safe distance. NHTSA should require simple standard controls that can easily turn off the engine in an emergency. In

many current Toyota vehicles, when the car is moving, it requires a sustained 3-second push of the button to turn off the engine. Though that is a safety precaution to prevent accidental engine shutoff, it is an action many owners may not be able to do in a panic situation. Ignition controls should be easy to operate, especially in an emergency.

NHTSA should require intuitive, clearly labeled transmission shifters in all cars. If your car is accelerating out of control, hitting the brakes and shifting into neutral is your best strategy but you want to know where neutral is when you are panicking. There should be consistency for shifters across all vehicles. NHTSA should also require a minimum distance between the gas pedal and the floorboard. Floor mats that entrap pedals have been a major focus in recent recalls but people frequently use thick mats or ill-fitting mats or stack the mats on top of each other. NHTSA should ensure that there is sufficient clearance between the pedal and the floor mat.

We also think that NHTSA's cap on civil penalties should be lifted to act as a deterrent against future violations and that NHTSA could improve the recall compliance process. The average consumer response rate to vehicles is 74.1 percent. Currently, manufacturers notify dealers about recalls and the dealers in turn notify car manufacturers once the cars are repaired in response to a safety recall. Consumers Union suggests that going forward car manufacturers submit such data to NHTSA. This information, which manufacturers already have, should include individual vehicle identification numbers, or VINs, of cars that are subject to a particular recall as well as when the recall repairs were performed on the vehicles. NHTSA would then be able to match up safety recalls with the manufacturer-provided VIN in a consumer-friendly searchable database. We would further encourage States to consider linking safety recall compliance with the ability to obtain a vehicle registration similar to the way consumers must show proof of insurance to register their cars now. This would help people who purchase used cars to know whether recall repairs have been made.

We also recommend that Congress take a look at the reports of a revolving door at NHTSA and whether this may have impacted safety decisions. We are pleased to hear today the administrator's comment that NHTSA will be looking into this particular issue.

Finally, we urge Congress to adequately fund NHTSA. In 2007, motor vehicle crashes accounted for 99 percent of all transportation-related injuries and fatalities yet NHTSA's budget currently amounts to just over 1 percent of the overall DOT budget. The agency's budgeting and staffing for auto safety and consumer protection functions should be commensurate with the realities of traffic safety.

Consumers Union thanks the committee for the opportunity to present its recommendations as you move forward.

[The prepared statement of Ms. Gadhia follows:]



Nonprofit Publisher  
of Consumer Reports

Statement of

Ami V. Gadhia  
Policy Counsel  
Consumers Union

Before the  
Subcommittee on Commerce, Trade, and Consumer Protection  
of the House Energy and Commerce Committee

“NHTSA Oversight: The Road Ahead”

March 11, 2010

Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee, thank you for the opportunity to testify on the road ahead for the National Highway Traffic Safety Administration (NHTSA). I am Ami Gadhia, Policy Counsel with Consumers Union (CU), the non-profit publisher of *Consumer Reports*®.<sup>1</sup>

The recent Toyota recalls involving sudden unintended acceleration have focused national attention on safety problems that are infrequent, but potentially fatal. Much of the ongoing debate and public outcry has centered on why these issues weren't caught or properly acted upon earlier. But while the U.S. has arguably the best automotive safety net in the world, these types of problems can be hard to catch and difficult to diagnose – in this case, with deadly consequences.

Consumers Union believes that addressing this formidable challenge demands a coordinated effort by the government, automakers, the public and independent consumer groups such as our own.

Below are recommendations that we would like to see implemented to improve our auto-safety system.

#### **I. What the Government Can Do**

The government is at the center of the nation's auto-safety net and is one of the keys to catching new problems as early as possible.

Even given difficulties in identifying and diagnosing an issue like unintended acceleration, Consumers Union believes government regulators should have moved aggressively to pursue the

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<sup>1</sup> Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

issue and protect consumers' safety. Yet various news reports<sup>2</sup> and our own analysis of documents from the investigation point to a pattern of missed opportunities. NHTSA and Toyota were aware of unintended acceleration complaints involving Toyota models as early as 2003, when the agency received a petition to investigate the problem. It took almost seven years for this safety issue to be more fully addressed with the current recalls of more than 7 million Toyotas. Consumers Union believes government regulators must be better prepared to spot and fully address similar safety issues going forward. We are pleased that NHTSA is now looking into potential electronics issues behind the sudden unintended acceleration (SUA) events involving Toyotas, and we look forward to the agency's findings.

**Our recommendations include:**

- **Improve public access to safety information:** NHTSA's Office of Defects Investigation (ODI) collects complaints and data about autos from the public and manufacturers in two separate databases: the consumer complaints database and the agency's Early Warning Reporting (EWR) system. But both have limitations and the data they provide are not integrated, making it more difficult for investigators to spot issues and consumers to find information.

Public access to this information should be dramatically improved. Consumers shouldn't have to visit different site sections to see all of this information, or be forced to search it using tools that are less than user-friendly. All complaint information should be visible via a single consumer-facing site. And this service must include intuitive tools that allow users to easily find information for particular models and compare vehicle safety records.

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<sup>2</sup> See "Secretive Culture Led Toyota Astray," *Wall Street Journal*, Feb. 8, 2010, <http://online.wsj.com/article/SB10001424052748704820904575055733096312238.html>; and see "Safety Agency Scrutinized As Toyota Recall Grows," *New York Times*, Feb. 9, 2010, <http://www.nytimes.com/2010/02/10/business/10safety.html>.



We also recommend that NHTSA initiate a program to raise public awareness and invite more drivers to participate in data gathering. We believe many safety problems are not reported to NHTSA and that public participation in the complaints program clearly needs to be encouraged. Dealers should also be asked to contribute by educating new owners about the complaints program, and encouraging them to report problems. The more public complaints there are to analyze, the greater the chance that problems such as unintended acceleration will be identified at an early stage.

- **Mandate specific safety changes in new cars:** NHTSA should promulgate the following safety regulations to prevent sudden unintended acceleration in all automobiles:

- **Require cars to be able to stop within a reasonable distance, even with the throttle fully open.** A sustained press on the brake pedal should allow the car to stop in a reasonable distance, even if the throttle is wide open. One method to reduce stopping distances is “smart throttle” technology that allows the brakes to override the throttle. But other methods may be appropriate. To us, the most important safety feature is to ensure that a vehicle can stop within a reasonable and safe distance to be determined by NHTSA.
- **Require simple, standard controls that can easily turn off the engine in an emergency.** In many current Toyota vehicles, for instance, the engine is shut off with a single press of the button when parked, but when the car is moving it requires a sustained three-second push. Though that is a safety precaution to prevent accidental engine shut-off, it is an action many owners may not know and -- particularly in a panicked situation -- may be unable to do. Recently, Toyota announced that it will change how its start-stop ignition button operates to improve

ease of use.<sup>3</sup> Ignition controls including push buttons should provide immediately intuitive operation in the event of an emergency.

- **Mandate intuitive, clearly labeled transmission shifters in all new cars.** If your car is accelerating out of control, hitting the brakes and shifting into Neutral is your best strategy. The advent of gated and electronic shifters can make finding Neutral difficult if the driver is in a panic. Shifters should be designed so that a driver can quickly identify the Neutral position and easily shift gears to regain control.
- **Require a minimum distance between the gas pedal and the floorboard.** Floor mats that entrapped throttle pedals have been a major focus in recent recalls. People frequently use thick all-weather floor-mats, ill-fitting mats, or stack one mat atop the other. Simply allowing for sufficient clearance between the pedal and the floor mat, no matter what position the pedal is in, will reduce the risk of pedal entrapment.

- **Remove NHTSA's cap on civil penalties:** NHTSA has the authority to seek civil penalties from automakers and suppliers for a variety of violations. If agency officials determine that a company violated such statutory obligations, the company can be fined up to a maximum of \$16.4 million in civil penalties. This amount might be considered by a large, multi-billion dollar manufacturer as just the “cost of doing business.” We recommend removing this cap on civil penalties to act as a deterrent for future violations of the law.

- **Improve the recall compliance process:** According to NHTSA, the average consumer response rate to vehicle recalls is 74.1 percent. We are also concerned that when consumers purchase used cars, they may have no way of knowing whether the vehicle has had all recall-related repairs performed. Further complicating the process, not every model year of a particular vehicle is subject to recall; sometimes, only a range of vehicle identification numbers (VINs) is recalled. For

<sup>3</sup> See “Toyota to Redesign Start-Stop Buttons to Improve Safety,” <http://blogs.consumerreports.org/cars/2010/02/toyota-to-redesign-start-stop-buttons-to-improve-safety.html>.

example, only cars with a component manufactured at a certain facility, or during certain months, are at issue. But for the safety of all drivers on the road, it is important that recall repairs are made.

Car manufacturers monitor the recall and repair process. Manufacturers notify dealers about recalls, and the dealers, in turn, notify car manufacturers when the cars are repaired in response to a safety recall.

CU suggests that going forward, car manufacturers submit to NHTSA in a timely manner the individual VINs of cars subject to a recall as well as information when the recall repairs have been performed on the vehicles.

NHTSA would then be able to match up safety recalls with the manufacturer-provided VIN numbers in a consumer-friendly, searchable database. The consumer would be able to enter a VIN number to check for any applicable recalls without waiting days or weeks for the recall letter to arrive from the manufacturer. (We envision this system as supplementing, not supplanting, direct consumer notification by, e.g., letter from the manufacturer.) Purchasers of used cars could also check to see whether the car they are buying has any outstanding recalls. We would further encourage states to consider linking safety recall compliance with the ability to obtain a vehicle registration - similar to the way consumer must show proof of insurance to register their cars now.

And as a final note on privacy, we do not believe any personal information should be stored with VIN numbers in NHTSA's database; we simply urge that a method be established by which consumers can check to see if a specific vehicle is subject to a safety recall and, of special value to used car purchasers, learn whether the recall repair has been performed.

- **Give NHTSA more resources:** Consumers Union believes NHTSA is in need of additional funding and staff. In 2007, motor-vehicle crashes accounted for 99 percent of all transportation-related fatalities and injuries. Yet NHTSA's budget currently amounts to just over 1 percent of the overall Department of Transportation (DOT) budget.

The need for additional funding support will be even more imperative if NHTSA proceeds with the recommendations outlined above, which could put more pressure on agency resources. It is important to make sure that the agency's budget and staffing for auto-safety and consumer-protection functions is commensurate with the realities of traffic safety and can keep up with the agency's other priorities.

We are also concerned about reports that former NHTSA employees have gone to work for the companies that they once regulated and that this may have impacted safety decisions.<sup>4</sup> We urge Congress to examine this issue and the loopholes in current government ethics rules, and to consider additional ways to stop the "revolving door" at NHTSA and other federal agencies.

## **II. The Roles of Manufacturers, Consumers, and Consumer Reports®**

We believe that car manufacturers, consumers, and Consumer Reports® can all do more going forward.

### **A. Auto Manufacturers**

First and foremost, vehicles should be well designed from a safety perspective, with modern safety features and good crash-test results. In addition, automakers receive a steady stream of feedback on service and safety problems, directly from dealers, through warranty claims, from complaints made directly to the automaker, and other sources. This information is critical to identifying and resolving issues – and to alerting dealers, the government and consumers to issues and fixes.

But Consumers Union believes manufacturers should go above and beyond when designing for safety, even when not mandated by specific government regulations. Many advanced safety features – including electronic stability control - are not currently offered on some budget cars. Young families and teenagers are often driving vehicles that are the last to get what we consider to

<sup>4</sup> See "Analysis Finds Uneasy Mix in Auto Industry and Regulation," *Washington Post*, Mar. 9, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/08/AR2010030804900.html?hpid=topnews>

be basic and essential safety features. We call on manufacturers to make all safety features standard on all cars. We also call on manufacturers to end the practice of packaging critical safety options with luxurious amenities that people prefer not to purchase. For instance, if buyers are interested in electronic stability control for their Honda Civic, they are required to equip the car with leather and heated seats – at thousands of dollars in extra cost.

Regarding information sharing, manufacturers are required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act to report select information to NHTSA. That information is given to NHTSA via the EWR system. But only the tallies for fatalities, injuries and property damage and production numbers are currently made public under the EWR system; consumer complaints to the manufacturer are currently kept confidential<sup>5</sup>. We believe consumer complaint numbers submitted by manufacturers to NHTSA under the EWR system should also be made public by NHTSA and should be easily searchable, as described in Section I.

We also call on manufacturers to make information from black box recording devices more immediately accessible to government investigators. Most new passenger vehicles are equipped with Event Data Recorders (EDRs), often referred to as black boxes, which record such data as vehicle speed, throttle position, air-bag deployment, brake application, and safety belt usage. These data can help police and accident investigators reconstruct what happened in a crash. But it can be difficult for carmakers and investigators to easily access this information. Toyota, for instance, has only limited proprietary data retrieval tools for their black boxes. Other companies use formats that can be easily read by commercial tools. We encourage all automakers to quickly adopt formats to enable swift information retrieval and dissemination to crash investigators.

EDR information must also be standardized and expanded - and much of it will be, based on a 2006 mandate from NHTSA that defines detailed monitoring requirements for EDRs, including

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<sup>5</sup> See: <http://www-odi.nhtsa.dot.gov/ewr/qb/documents/NHTSA-ODI-EWR-Facts.pdf>

which systems should be recorded and for how long. These standards must be implemented in EDRs that are installed in the 2013 model-year cars. We encourage carmakers to apply these monitoring standards to their vehicles as soon as possible, with the appropriate privacy controls.

**B. What Consumers Can Do**

Data from the field—actual owner experiences—is a key component to unearthing defects and safety-related faults. Consumers drive cars on a daily basis, under all sorts of conditions, and are arguably our best real-world automotive testers. As drivers put cars through these daily stresses, and issues arise, they can act as an important early alert system simply by registering complaints and issues with government databases and manufacturers. Indeed signs of possible sudden unintended acceleration issues were reported to NHTSA as early as 2003.

These safety databases are only as good as the data they contain. And active contributions from consumers seem to be lagging. NHTSA gathers a modest 30,000-plus complaints each year; compared to the number of people who drive (the Department of Transportation says 203 million people were licensed in 2006) many incidents are likely going unreported.

We therefore encourage consumers to report major safety problems both to NHTSA and to the car's manufacturer. Consumers need not report squeaks and rattles, or parts that normally wear like brakes and mufflers. But if the brakes totally fail suddenly, if the car races out of control, catches fire, or the steering fails, they should take action and let NHTSA know about it. By reporting their information to the agency, they can ensure it becomes part of the public record. Whether reporting a complaint to a dealer, an automaker, or NHTSA, we urge consumers to accurately state their car's VIN. The information in this number can help experts isolate a problem that is common to, say, a specific assembly plant or to vehicles built in a certain period of time.

Consumers also have a critical safety role to play in ensuring that potentially unsafe recalled vehicles are fixed in a timely way. As noted above, according to NHTSA, the average consumer

response rate to vehicle recalls is 74.1 percent. The response rate is low in part because manufacturer recall letters may not reach all affected owners, including those who have changed their mailing address or those who have bought used cars. But owners who have been notified could do more to make sure recall fixes are implemented in more vehicles. We also have recommendations for improvements to the recalls process, described above in Section I.

**C. What Consumer Reports Will Do**

Consumer Reports' role in the marketplace is to evaluate product performance and provide detailed Ratings and reliability information to help car buyers choose the best vehicle. Our Ratings, evaluations and recommendations are based on extensive vehicle testing and on reliability data on more than 1.4 million vehicles. Our formal testing is done at our Auto Test Center track in Connecticut and on surrounding public roads, and our testers put thousands of miles on each vehicle over a typical six-month period.

Safety is a major focus of our testing. We evaluate vehicles' braking capabilities on both dry and wet surfaces and perform a number of tests to see how vehicles handle at their limits. We combine our test results with crash-test scores from NHTSA and the Insurance Institute for Highway Safety (IIHS) to produce our overall safety Ratings. In our reliability survey, we ask for detailed information on problems that subscribers have experienced in 17 different areas, making it the most comprehensive survey of its kind.

Given our rigorous testing and survey process, why didn't we spot the sudden acceleration issues with Toyota or in any other vehicles? First, we didn't encounter any issues with either floor-mat entrapment or a sticking accelerator pedal in any of the Toyotas we've tested. These episodes are too rare to show up in our standard testing. And they did not surface as an issue in our annual reliability survey. Had we noticed a problem in our testing, we would have contacted the company immediately, as we did when we experienced a perceived brake failure in our Ford Fusion Hybrid.

Going forward we will broaden the scope of safety information on our site in as many of these areas as is practical, beginning with recall information. Consumers should not learn of safety related problems via news reports, only to wait weeks for notification by mail of a recall. Communicating recall information to consumers is currently the manufacturer's responsibility. But we will support these efforts by publicizing recall information on our Web site and possibly other venues.

NHTSA is our main safety watchdog, and we will continue to rely on the agency as our first line of defense. A more accessible NHTSA database (based on some changes we are recommending for the government) will also allow Consumer Reports to more thoroughly analyze and publish analysis of consumer complaints. If we were able to more fully mine the database, Consumer Reports and other independent groups like ours could do more to support NHTSA by flagging any spikes we see in problems with specific vehicles. Such information would be useful for car owners and buyers, as well as the agency and automakers.

We will make additional efforts to gather information about our subscribers' experiences with recalls. We will be gathering this information for all vehicles, not just Toyotas. We'll ask our more than five million subscribers to tell us if their car had a recall in the last year. We'll also ask them about the specifics of handling the recall, including how they first heard about it (from news reports, a letter from the manufacturer, or a letter from the dealer); whether they took their car in to be fixed; and how long it took to complete the fix. We will share our findings with consumers, government regulators and other groups that might find it useful.

### **III. Conclusion**

The current situation with SUA in Toyotas presents the Committee with opportunities for improvements to our auto safety net. Consumers Union thanks the Committee for the opportunity to present its recommendations as you move forward.



Mr. RUSH. The Chair thanks the witness.

The Chair now recognizes Mr. McCurdy for 5 minutes for the purposes of an opening statement.

#### STATEMENT OF DAVE MCCURDY

Mr. MCCURDY. Thank you, Mr. Chairman and Ranking Member Whitfield for the opportunity to appear and speak on behalf of the industry as a whole. I must admit as you made your introduction, there was some chagrin on my personal part when I looked at the membership of this subcommittee in that I actually served with the fathers of three of the members, so it is a homecoming of sorts but I hadn't thought I had been gone that long. It is good to be back with you.

As you and your colleagues consider the road ahead of National Highway Traffic Safety Administration, it is important to remember three key points. The administrator, who we are all delighted that David Strickland is now the administrator of NHTSA, as he pointed out in the Department of Transportation highlighted today and actually I have a chart that is displayed here that motor vehicle crash fatalities and injuries are at historic lows. It is a very, very important point because that is the mission of the organization. Secondly, autos have never been safer and they are still getting safer every day because of innovative safety technologies including advanced electronics. And third, we need to be careful not to inhibit the innovation or the speedy identification and remedy of defects.

On the first point, as the chart indicates, sometimes when you see a chart like that it is confusing for folks but to put it in perspective, this figure reports fatality per 100 million vehicle miles traveled, so there are 1.16 fatalities per 100 million miles traveled. That is down from in excess of two. Put that in terms of human lives, and again, we all know that this is far too many, that is a significant reduction from what Joan Claybrook would indicate back in the 1970s when it was at a high of 51,000. Now that is a decrease of 17,000. So I think that is a very important point that there is a significant and steady reduction despite increased ownership and increased vehicle miles traveled. So I think this is a goal that we share and we want to continue to work to support.

As far as the safety of vehicles, by every single measure, these vehicles are dramatically safer than years ago, and in the last 15 years we have seen a revolutionary expansion of advanced vehicle safety technologies including increased number of electronic components and features. Mr. Braley mentioned being able to take apart a carburetor and engine in the basement. It is indeed impossible to do that today. But a lot of the technologies that we see to meet fuel economy requirements, to meet emission controls, to provide safety are because of these advanced electronics. Also, Ms. Claybrook said that voluntary standards don't work but in fact many of the incredible safety innovations were voluntary and were brought out before the agency ever considered regulating it. Electronic stability control—electronic stability control saves anywhere from 5,000 to 9,000 lives annually. Lane departure warning, over 2,700 lives. Safety belt reminders and safety belt interlock, again significant. Side airbags, forward collision warning, emergency

brake assist, adaptive headlights, blind spot information systems, all of these are innovations that the industry introduced ahead of regulation.

Secondly, it is really important to recognize that electronic systems are often far more reliable over time than mechanical systems. I used to represent the electronics industry and I will tell you that the advancements in solid-state technology provide increased performance. It enables vehicles to not only sense, diagnose and also to have failsafe modes that are not possible with traditional historic mechanical systems. So this is a very significant technology which is helping us to meet our goals of sustainable mobility.

And third, as I indicated, I think we are going to have to be careful not to inhibit this cycle of innovation because this industry innovates more rapidly and gets into the marketplace technologies for consumers and so we need to maintain a policy framework that embraces technology-based solutions ahead of regulation, and I don't think the public would be well served if automakers were forced to wait for the government to catch up with industry's innovation.

And it also important, we have talked a lot about recalls, but the vast majority of recalls are voluntary, and I have a chart here talking about detecting and correcting the defects sooner. In fact, the number of recalls is up. Some may say well, isn't that a sign of problems. In fact, that is a good point because the number of vehicles affecting is coming down so automakers are using the recall system based on data it receives not only from the consumer directly but also from the agencies to initiate these actions, to identify the defects and get them remedied and get the vehicles back into the marketplace.

And then just in closing, I want to make a couple points about some suggestions for this committee, and I appreciate—I know how this chairman works and I know how this committee works, and you want to build a consensus on a bipartisan basis to address significant concerns. We would respectfully submit that Congress really does need to ensure that NHTSA has the resources to do its job and we would support this committee in its efforts. We have long advocated additional resources to fund the National Automobile Sampling System, the NASS system, which we believe is underfunded. We also support a number of other legislative elements that we hope would be included in this reauthorization such as State inducements, in other words, working to encourage States to adopt primary enforcement safety belt laws. I know that Chairman Oberstar is looking at this in his reauthorization. Our industry spent hundreds of millions of dollars in campaigns to try to pass primary seat belt enforcement laws across the country, and we have made real progress. We had three States this year alone.

We also believe there should be a first offense with an ignition interlock requirement for impaired driving, drunk driving. The statistic that is not reported up there, the 33,000 deaths, unfortunately, 30 percent of those or more are the result of less than 1 percent, one-half of 1 percent of the drivers and those that are impaired drunk driving. We have to get those people off the road.

And then lastly, the graduated license laws for teens based on best practices, the STANDUP Act, we support that, and then there

are other things that can really work to fund support high-visibility enforcement efforts such as Click It or Ticket and other limit under arrest or over the limit under arrest provisions. And again, there is an opportunity to support a driver alcohol interlock device research program called the ROADS SAFE Act, which puts money to try to develop research to prevent drunk drivers getting access to vehicles or starting vehicles.

We appreciate very much your work. I understand how challenging it is. And we look forward to working with you to help develop commonsense solutions to some of these challenges.

[The prepared statement of Mr. McCurdy follows:]



**STATEMENT**  
**OF**  
***THE ALLIANCE OF AUTOMOBILE MANUFACTURERS***

**BEFORE THE:**  
**SUBCOMMITTEE ON**  
**COMMERCE, TRADE AND CONSUMER PROTECTION**

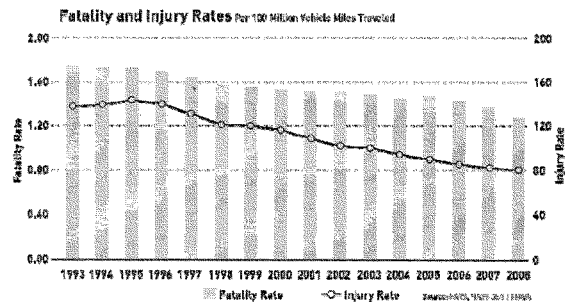
**MARCH 11, 2010**

**PRESENTED BY:**  
The Honorable Dave McCurdy  
President & CEO

Thank you Chairman Rush, Ranking Member Whitfield, and members of the subcommittee for the opportunity to provide the automakers' perspective on manufacturing, selling and servicing the world's safest motor vehicle fleet. As you and your colleagues consider the road ahead for the National Highway Traffic Safety Administration (NHTSA) it is important to bear in mind the broader context of motor vehicle safety in the U.S. today.

**Fatalities and serious injuries resulting from motor vehicle crashes in the U.S. are at their lowest level in 49 years.** This fact is remarkable given that during the same timeframe the number of licensed drivers has more than doubled and annual vehicle miles travelled have more than quadrupled. Fewer fatalities per mile driven are occurring on U.S. roads than at any other time in the modern era of driving; in fact, in 2008 more than 99 percent of police-reported crashes resulted in no fatalities. This is because the government and the industry are doing many things very well to innovate, develop, and implement effective safety systems and programs. Significant technological advances in the design and construction of automobiles, tough but fair regulatory initiatives at the federal level, increased safety belt usage, and road infrastructure improvements are all having an historic impact on vehicle safety.

NHTSA's mission is to *"save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity."* By the most important objective measure – the number of fatalities and serious injuries resulting from motor vehicle crashes – the agency has been very successful. From 2007 to 2008, overall traffic fatalities fell nearly 10 percent to their lowest level since 1961.

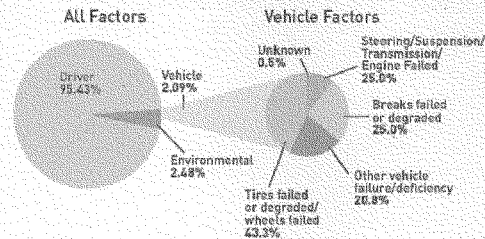


Preliminary data shows the trend continuing in 2009. NHTSA's analysis of the first 3 quarters in 2009 show a 7.9 percent drop in highway fatalities. In addition the fatality rate for the first nine months declined to 1.16 fatalities per 100 million vehicle miles traveled (VMT), down from 1.26 fatalities per 100 million VMT in the first nine months of 2008.

This continuing trend of improved traffic safety has occurred as vehicle manufacturers have incorporated an increasing number of electronic components and features. Electronics benefit automotive safety in two ways. First, electronic systems are often more reliable over time than mechanical systems. Second, electronic systems can provide performance, sensing, diagnostics, and failsafe modes that are not possible with mechanical systems. A recent example is electronic stability control (ESC). ESC provides improvements in vehicle handling and stability that no mechanical system could match. ESC is widely viewed as one of the most significant safety enhancements in automobiles in many years. Another example is the brake override [smart pedal] feature that has been talked about in recent hearings to help address the risk of unintended acceleration. Studies have repeatedly shown that the most common cause of unintended acceleration in motor vehicles is pedal misapplication by drivers. Only with the capabilities of electronic throttle control systems can manufacturers offer the smart pedal feature that can help address potential unintended acceleration events when both the brake and accelerator pedals are pressed. No mechanical system can provide that same benefit. Technology provides a pathway to improve vehicle safety and efficiency – we need to maintain a policy framework that embraces technology based solutions ahead of regulation.

In 2005, Congress authorized NHTSA to conduct a National Motor Vehicle Crash Causation Survey (NMVCCS). This effort involved a nationwide survey of crashes involving light passenger vehicles with a focus on the factors related to pre-crash events. NMVCCS investigated a total of 6,950 crashes during a three-year period from January 2005 to December 2007. This survey's results are consistent with the groundbreaking Indiana University Tri-Level study conducted nearly three decades earlier: of all crash factors, the vehicle was attributable as a factor 2.09 percent of the time while the driving environment was a factor 2.48 percent of the time and the driver was a factor 95.43 percent of the time. Vehicle factors include both equipment-related and maintenance related failures.

### NMVCCS Findings



**Automakers pursue diligent efforts to protect our customers...who include our families.** Safety is among the industry's top priorities, and it is a top priority for our customers. According to Consumer Reports Auto Brands Perceptions survey for 2010, the number one factor consumers consider when they purchase a new vehicle is safety. Safety leads even quality and durability. Consequently, automakers have developed and introduced many of today's most significant safety features without a government mandate. Voluntary safety features developed and implemented by automakers include anti-lock brakes, ESC, electronic roll mitigation, adaptive headlights, side airbags and curtains, front passenger safety belt reminder systems and advanced collision avoidance features.

Automakers are focusing on enhancing safety in multiple ways: crashworthiness, crash avoidance, crash mitigation, and post-crash emergency response facilitation. For example, adaptive cruise control, forward collision warning, lane departure protection systems and more help drivers avoid crashes and lessen their severity when a crash is unavoidable. Advanced technologies are also implemented to protect occupants involved in crashes, with technologies like advanced airbags, advanced head restraints and safety belt pre-tensioners. Virtually all of today's advanced vehicle safety technologies are being developed and implemented ahead of regulatory mandates.

**The United States leads the world in automobile safety, and other countries emulate our policies.** Vehicles manufactured for sale in the U.S. are built to comply with the world's most extensive safety regulations. For example, Federal Motor Vehicle Safety Standard (FMVSS) 208 (Occupant Crash Protection) represents the most comprehensive crash standard in the world, requiring use of a range of test dummies, angled crash tests at various speeds and ability to suppress airbags when child seats are used. In addition, FMVSS 126 (Electronic Stability Control Systems) and FMVSS 214 (Side Impact Protection), along with the proposed FMVSS 226 (Ejection Mitigation), set new global standards for safety.

Beyond the Office of Defects Investigation (ODI), which has recently been the focus of attention, NHTSA has other resources devoted explicitly to motor vehicle safety. The agency's Office of Vehicle Safety Compliance (OVSC) develops objective and repeatable compliance test procedures for new and amended Federal Motor Vehicle Safety Standards that the agency uses to evaluate regulation conformance. It also conducts the agency's vehicle compliance test program that annually includes an average of 230 vehicle tests and over 800 tests on motor vehicle equipment.

In addition to the compliance test program, testing performed by the agency's New Car Assessment Program (NCAP) also provides an indication of compliance with related FMVSS requirements and can help identify the existence of potential safety-related concerns. Historically, NHTSA conducts more than 150 NCAP vehicle crash tests per year covering over 85 percent of the new car fleet.

The Alliance agrees that Congress should ensure that NHTSA has the resources to do its job. Secretary LaHood has touted the President's request for 66 additional FTEs at NHTSA. The Alliance believes that another critical need is to fund the National Automobile Sampling System (NASS) at a level sufficient to attain its intended design size to ensure critical "real-world" data is collected at a sufficient number of sites nationwide to provide the statistically valid, nationally representative sample originally intended.



The budget for NASS has not kept pace with either the Department's informational needs or inflation. Moreover, these needs are growing as automakers reinvent the automobile in response to societal demands for ever safer and cleaner vehicles. Starved for funds, the capability of NASS has been dramatically reduced. Currently, NASS collects in-depth data on approximately 4,500 crashes – less than a third of the intended design size of 15,000 to 20,000 crash cases annually. A \$40 million dollar annual investment in NASS equates to 1.73 cents for every \$100 of economic loss.

**Automobiles are complex, integrated systems that undergo years of rigorous testing and certification before they ever go on sale.** Automakers are world leaders in research and development spending. In fact, in 2009...even in the worst market since the Great Depression...automobile manufacturers still invested \$86 billion on research and development, much of it devoted to advanced vehicle safety technologies. Today's high-tech automobile is assembled from thousands of parts all performing specialized functions in carefully specified ways.

As one of the marketplace's most regulated products, the automobile undergoes rigorous testing to validate performance to engineering and regulatory standards. Through the Society of Automotive Engineers (SAE), 14,000 mobility experts in 100+ countries have worked together to develop more than 2,600 globally recognized standards for motor vehicle transport.

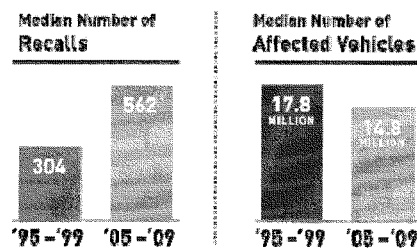
The durability of today's automobiles is at all time highs. The median age of cars in 1970 was 4.9 years, according to R.L. Polk & Co. In 2007, the median age nearly doubled to 9.2 years. J.D. Power and Associates, recognized for their quality studies, reports that vehicle quality and dependability have improved significantly in the past ten years. Their Vehicle Dependability Survey demonstrates a 62 percent reduction in problems over the past decade.

Beyond all of the safety development work that goes into designing and producing new vehicles, thousands of engineers and specialists actively and continuously monitor the field performance (e.g., review of warranty claims, customer correspondence and information from suppliers) of their products, in addition to reviews of consumer complaints and Early Warning

data supplied to NHTSA. Each manufacturer has a review process to monitor this field data to determine whether a defect trend related to motor vehicle safety can be identified and whether a recall is appropriate.

**The trend in recalls is for manufacturers to evaluate concerns sooner and respond quickly with voluntary initiatives when needed.** Most recalls occur before there have been any fatalities, injuries or crashes which may be attributable to the defect being remedied. From 1966, when the Safety Act was enacted, through 2009, there have been 12,727 vehicle recalls involving 467,180,795 vehicles to remedy safety-related defects and non-compliances. In 2009, there were 492 recalls affecting 16.4 million vehicles. Of that total, 340 of those recalls, or about 70 percent, were undertaken by manufacturers without any NHTSA involvement; the remaining 152 recalls were “influenced” by NHTSA. With respect to recalls that are NHTSA “influenced,” usually, there are legitimate questions regarding whether the issue observed in the field actually presents an “unreasonable risk to motor vehicle safety,” (the statutory threshold for triggering notice and remedy) or whether a defect trend exists.

During the five-years from 2005 to 2009, the median number of vehicle recalls undertaken annually was 562 affecting 14.8 million vehicles. Comparing this five-year period to the five-year period from 1995 to 1999, the median number of recalls conducted annually has increased by 85 percent while the number of affected vehicles has declined by approximately 17 percent. This suggests that both NHTSA and the industry are doing a better job of identifying and pinpointing safety-related defects and taking faster action to remedy those defects. The current trend further indicates that manufacturers are identifying defects sooner, as evidenced by the decline in the population of vehicles affected.



**NHTSA—and federal law—demand specific, transparent actions to protect consumers.** Federal law requires all automobile manufacturers to notify NHTSA within five days of determining that a safety defect exists, and to promptly conduct a recall. Providing consumer notice is a priority, to both automakers and to NHTSA. Under statute, automakers must notify customers by mail, explaining the potential safety hazards and the correction process. NHTSA supports this process through its Vehicle Safety Hotline and its website, [www.safercar.gov](http://www.safercar.gov). Automakers comply with extensive reporting requirements to assist NHTSA in identifying potential safety defects in a timely manner, including reports of injuries and deaths related to an alleged or proven defect, consumer complaints, warranty claims, field reports, property damage, customer satisfaction campaigns, consumer advisories, recalls (including foreign recalls) or other activities involving the repair or replacement of vehicles or equipment, as required by the National Traffic and Motor Vehicle Safety Act, as amended by the TREAD Act in 2000.

In addition, there are stringent non-federal regulatory or legal requirements covering consumer complaints and defects. The automobile is one of the most heavily regulated consumer products in American commerce. A panoply of laws, regulations and potential legal liability attach to everything from production, advertising, sale and repair, to ultimate disposal or recycling. For example, every state has a vehicle-specific Lemon Law that requires manufacturers to repurchase new vehicles that contain defects that impair the use, value or safety of those vehicles.

In summary, a range of data demonstrates that our roads are safer today, even with consumers driving more. These results can be attributed to rigorous R&D and high quality standards by automakers, and regulatory requirements that lead the world. In the event of a recall, the statutes are explicit on the procedures. Our system of “checks and balances,” including Congressional oversight, the courts and consumer buying patterns, helps maintain the safest motor vehicle fleet in the world.

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Mr. RUSH. The Chair thanks all the witnesses and the Chair thanks Mr. McCurdy for your statement. The Chair recognizes himself for 5 minutes for questioning.

Mr. McCurdy, there has been a lot of testimony at this hearing and in past hearings, and some of it has centered on the black box as a technological solution or a recording device that would help in gathering data and also determining the causes for accidents. What is the industry's response to this phenomenon of the black box?

Mr. MCCURDY. We believe the information from event data recorders is important for NHTSA to do its job. They do have a rule that has standardized or recommended standards for the type of data that would be acquired. I think the industry is moving rapidly towards deployment of that system. Over 60 percent of all vehicles today, modern vehicles, have that capability. The only caution I would give, and again, having come from the intelligence and defense world, when we talk about black boxes or we come from the world of aerospace where some people think that in an aircraft there is this black box that they recover after an accident. Actually these data systems are embedded throughout vehicles and so it is not just one solitary device. But is important that there are commercially available tools to access that. So I think the agency is going to be addressing this and we look forward to working with them. I think this is something that can be addressed.

Mr. RUSH. Ms. Claybrook, you indicated that you think that NHTSA's current budget is inadequate and that the President's budget for this year, or next year, rather, is inadequate. What do you think as a former administrator in today's dollars, how much do you think NHTSA's budget should be and what do you think should be the categories that we should look at increasing personnel and other resources for NHTSA?

Ms. CLAYBROOK. Thank you, Mr. Chairman. I think that the budget should be doubled. It is \$132 million, which is a pittance by any measure in the federal government, and it should probably double the year after that. This agency is starving to death. It can't do the research it should. It can't collect the data that it should. It doesn't have the expertise that it should. It doesn't have the enforcement personnel that it should. And all of us suffer from that because of deaths in the highway, and I think that Mr. Strickland is going to be a good leader for this agency. I am looking forward to see his work, I think he needs the resources to do it, and I have already been talking to him and the Secretary a little bit about this, and I think his answer was very appropriate that they would use very wisely the resources that the Congress decided that they would give the agency. He didn't say we didn't want them or that they couldn't use them. He said that they would use them wisely, and I think that is as far as he is allowed to go under the President's rules and I am very pleased to see that he said that.

Mr. RUSH. You have given us seven—

Ms. CLAYBROOK. I would add one other thing, Mr. Chairman, which is that issues have been raised today about the reduction in death and injury on the highway, which is magnificent, but I would also point out that after the oil crisis of 1973, there was a reduction of 9,000 deaths a year because the economy was in the sink, and I think that if you look at the documents that were prepared by

the agency itself, for example, here is there list that they put out today of their crash stats, you will see that every time there is a downturn in the economy, there is less discretionary driving and there is a downturn in death and injury, but it comes right back up again, and so should anyone suggest that this is a permanent fix for the agency, it is not. I think that you are still going to need those resources, new safety standards, and there are many others that I didn't mention today which I will submit a list of for the record of other safety standards that the agency is woefully behind in issuing.

Mr. MCCURDY. Mr. Chairman, may I inject one point on that, just clarification? I think the administrator said that it actually had decreased and decline for 15 and a half straight quarters. That is more than the current recession, so I think this is a long-term trend. It is because of the regulatory efforts and it is because of the work of the industry cooperatively with that agency and also the work of Congress.

Ms. CLAYBROOK. Well, I wouldn't say that. The acting administrator, the one who went to Japan, Mr. Medford, he gave a presentation which I will also submit for the record in which he said that safety technologies had between 1960 and 2000 saved 328,551 lives, and so I do agree, I agree with Mr. McCurdy that cars are safer today. I am disappointed that the industry often opposes some of those improvements but they also do take initiatives on their own, which he has mentioned, and these safety features can make a huge difference. They have made a difference in the number of lives saved and the number of deaths on the highway today would be far, far greater were not this agency doing its work, but there is much more that can be done and we will see more deaths and injuries when the economy improves.

Mr. RUSH. My time is expired. The Chair recognizes Mr. Whitfield for 5 minutes.

Mr. WHITFIELD. Thank you. This has been quite an interesting hearing, and of course, any time we talk about death on the highway, and all of us have known people who have been killed in car accidents or have had loved ones that have been disfigured, and there is no way not to be emotional about individual deaths on the highway. But I am walking away from this hearing feeling a little bit better really about things, understanding that the Toyota issue is out there but when you have this kind of a reduction in the deaths per 100 million miles from in the middle 1970s 3.34 fatalities per 100 million vehicle miles down to last year 1.16 per 100 million miles, and it doesn't really make any difference what the economy is or is not, we are talking about 100 million vehicle miles. So I think that is something we really should celebrate to see that the fact that this fatality rate is coming down.

Now, when we talk about the budget of NHTSA, I think the total budget is somewhere in the neighborhood of \$900 million but a lot of that goes to State grants, and you all may be more familiar with those State grants than I am and I know that Ms. Claybrook is right as far as vehicle safety. There is about \$132 million a year for vehicle safety. But I referred earlier, for example, to this Congressionally mandated study in 2005 about the causes of vehicle accidents, and it said that 95 percent were due to the driver, pri-

marily driver mistakes, and 2 percent, by the way, were related to vehicle or equipment defect but about 40 percent or 50 percent of that related to tires. So I am just wondering if maybe we should look at this in a different way and try to start focusing more money on educating drivers, better educational programs for drivers. And every State sets their own laws for how old you have to be and what kind of program you have to go through to drive. Because of the fact that 95 percent of all accidents are caused primarily because of driver neglect or whatever, should we be focusing on more programs to provide better educational opportunities for drivers to make them better prepared? And I would just ask each one of you that question and see how you would respond to that.

Ms. CLAYBROOK. Well, first of all, Mr. Whitfield, thank you so much for putting this out, and I appreciate your question. First of all, I would like to submit for the record the problems that we see with this causation study. It is quite complicated and I don't want to take the time today, but there are a lot of deficiencies in it. But even assuming, which I don't, that 95 percent of the crashes occur because of driver error, what you have to look at is what causes the death and injury, and Dr. William Haddon, who was the first NHTSA administrator, put together what he called the Haddon Matrix and it had pre crash, crash and post crash, and what you are talking about is the pre-crash issue, which is drunk driving, falling asleep, brakes don't work, whatever it may be in the pre-crash field.

Mr. WHITFIELD. Ms. Claybrook, there is only about a minute left, so I am just going to say that you disagree with what I was saying, I am assuming, that—

Ms. CLAYBROOK. Well, no, not necessarily. I will submit for the record the information on that. But what you want to do is to protect the driver and the occupants, and the way you do that is making sure the car is safe regardless of what causes the crash, and on driver education, NHTSA itself has done lots of work on this and shown that driver education really doesn't do much in terms of the long-term driving capability of most people.

Mr. WHITFIELD. What about you, Miss Gadhia?

Ms. CLAYBROOK. I like driver education. I mean, it—

Mr. WHITFIELD. What about you, Ms. Gadhia? Do you have any comments on that?

Ms. GADHIA. In our testimony that we submitted for the record, we took a look at the question that the committee is asking in light of all the recalls that we have seen in recent weeks, are there areas that we see for improvement, and so we have made our recommendations accordingly. We are pleased, though, that the agency and Secretary LaHood have put a great focus on distracted driving. That is something that has been obviously a big problem. So we do see a value in that particular kind of focus.

Mr. WHITFIELD. Mr. McCurdy?

Mr. MCCURDY. Thank you, Mr. Whitfield. In fact, in addition to driver behavior and performance, there is the driving environment, so the condition of roads, the lack of safety features there, weather, et cetera is a fact in 2 percent and then in the other instances, about 2 percent can be attributed to the vehicle. But I will tell you, since we had a reference to older vehicles, I will provide for the

record a copy of our playbook. It has an interesting photograph of a 50th anniversary event at the National Institute of Highway Safety, the Insurance Institute, and they did a 40-mile-an-hour head-on crash of two vehicles. One was a 1959 Chevrolet Belair. We are not picking on Chevy. It is actually a good story here. As you know, in 1959—well, some of you probably weren't around then but most of us who were know there is a lot of metal there—a 40-mile-an-hour head-on crash with a 2009 Chevy Malibu, which is a smaller car, and the results are dramatic. The cage, the front seat, the passenger area of the 1959, those passenger would have been killed. There is no doubt. I mean, severely injured, tremendous impact, crushing that compartment. In the new model, the cage is intact. It also has front airbags, side airbags, side curtains and also has other features that improve the likelihood of survival in a head-in crash regardless of the cause, whether it is someone swerving.

The last point I would make in this, a comment made about the 3-second stop. I drive a vehicle that has push-button on stop. That is one of the features that many, many consumers are moving towards. Are we saying that consumers today, it is in the manual, it is in the instructions and all the rest, can't take 3 seconds to push a button? I know that we panic, I know there are instances, but there is a need for education. There is a need. And maybe one of the positive aspects of all this investigation, all the reporting is maybe consumers are having to pay attention to actually the vehicles that they are driving, what are those shifters, where is neutral. My son-in-law drives a Camry. When this came up, the ones in the recall, he asked what do you do. I said you put it in neutral, OK. You don't want to turn it off at first, and those buttons are there and that 3-second delay is there for a reason because you don't want inadvertent shutting off the engine because then you could lose power. That affects steering and other conditions.

So I think there is a commonsense approach we need to take. Let us find out what it is. Let us work together. And I think that is what NHTSA and the industry should be discussing. So there is not one solution, but I think there is a genuine concern about it to try to develop some solutions.

Ms. GADHIA. Mr. Chairman, may I briefly respond to the comment about the push button?

Mr. RUSH. Certainly.

Ms. GADHIA. I would like to note that our recommendations have to do with when the consumer is in an emergency situation since we have been talking about sudden unintended acceleration, and I will note also that given what has happened, it is my understanding that Toyota is working on reconfiguring their push-button ignition so it can be turned off in an emergency situation with multiple quick presses in a short period of time. So that is what we are talking about.

Mr. RUSH. The Chair recognizes the gentlelady from Illinois for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I want to apologize to the witnesses for not being here for your testimony, though I have looked at it. I want to also just take this moment to say what a tremendous resource we have in Joan Claybrook, who did serve

as head of NHTSA, and I hope that not only our subcommittee but that NHTSA right now will take advantage of all of the years of experience she has had not only as an administrator but as an advocate. I thank Ms. Gadhia and also Mr. McCurdy for the work that you are doing, but I wanted to particularly just thank Joan for decades, I won't say how many, of being an advocate for consumers.

In looking at the priorities that you laid out for legislative and administrative—I mean, there are a couple things that are clearly legislative. If you think that penalties need to be enhanced, I think that is legislative on our part. But what are those things that you think the committee in particular has to deal with that really can't be done administratively to meet the goals that you have set out or the problems that you have identified?

Ms. CLAYBROOK. Well, I would say certainly in the penalty area that that is a legislative issue, and in the funding, that is a legislative issue. The President's budget is what it is and it is totally insufficient, and so it is not this committee's responsibility, although you do authorize, of course. I think that in the area of transparency, there have been some decisions made by the agency that this committee could change. In the early warning act, while there was a lot of discussion about the information being open, in fact, the way that it was written was interpreted as not being open. So I think that it would be helpful clarification on transparency with the early warning system because right now it is not available to any of us.

Ms. SCHAKOWSKY. And that would require a change or a clarification or—

Ms. CLAYBROOK. I think it would be—yes, I think it would be very helpful to have a clarification of that.

In terms of consumers being able to bring a lawsuit when a case is closed in the enforcement area, we definitely need to have legislation there because of the court of appeals decision, and then I think it would be very helpful to have some legislative support for improving the black box. This is something that could be done administratively by the agency. I think it would be really helpful because if the black box is mandatory, if it gathers a lot of really good data, if it can be downloaded easily, all of that data can come into NHTSA's data system and it would vastly enhance, excitingly enhance the capacity of the agency to analyze problems, to find out what is going on in the highway because this would be rich information from our crashes that occur right then on the highway, and this information is totally lacking in the agency now, and gathering it through the NASS system, which is this National Accident Sampling System, which is after the fact investigations, there was intended to be 20,000 of them a year, it is now 4,000 because of the cost, and this I think will never get to the 20,000. So why not take advantage of this data that is going to be collected anyway in black boxes under what I think has to be a mandate for the black box itself and use that data for the operation for the agency as well as particular crashes.

Ms. SCHAKOWSKY. Mr. McCurdy, you seem to be nodding at that. Did you want to comment on this?



Mr. MCCURDY. Thank you, ma'am. Actually I did want to comment. We asked for additional resources for NASS. We think that data needs to be collected, and this committee has oversight of NHTSA and the data is there but we need to make sure that the agency has the tools and resources to gather it. My only caveat on that, and I think this is something that we need to work on, is I don't believe that the wholesale release of raw and unverified data would further objective of quickly identifying and correcting defects. If anything, it may lead to more litigation, and I don't believe that is the answer.

Ms. CLAYBROOK. Well, I should say, Mr. McCurdy—

Mr. MCCURDY. I actually have the mic, Mr. Chairman. You know, I don't believe it would in fact do that. I would hope before the gentlelady leaves or we at least have another round actually talk about one of the principle issues that you are the key sponsor of which we supported, the Cameron Gulbransen Act, and the role that we actually played because this is one of our priorities and it shows where we can actually work together to address significant problems, and those are some of the most tragic instances that we know.

Ms. SCHAKOWSKY. They are.

Mr. MCCURDY. I worked with Senator Sununu and Senator Clinton at the time as well as your staff and the staff of the committee to make that happen, and the industry fully supported that. So I want to make sure that is on the record.

Ms. SCHAKOWSKY. And I appreciate that.

Ms. CLAYBROOK. Could I—

Ms. SCHAKOWSKY. Is there any way, Mr. Chairman, that Ms. Claybrook can respond back to that, or do you want—

Ms. CLAYBROOK. It is privacy information. I just want to make clear that I don't think that this data should be public as to individual crashes. It would be for statistical purposes. That is all I wanted to say.

Ms. SCHAKOWSKY. Thank you.

Mr. RUSH. The gentlelady's time has expired. The Chair recognizes the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Ms. Claybrook, let me just follow up what Ms. Schakowsky talked about. In these boxes, isn't the box on a person's car, that box would belong to that person, wouldn't it?

Ms. CLAYBROOK. Yes.

Mr. STEARNS. So wouldn't they have the right to opt out if they wanted to? Could they flick a switch so that if they didn't want this to occur, they could do it, or do you think that should not be—

Ms. CLAYBROOK. I don't think there ought to be an on/off switch.

Mr. STEARNS. So you think there should be no opt-out?

Ms. CLAYBROOK. I do not think there should be an opt-out.

Mr. STEARNS. OK. Secondly, the information they collect is obviously speed, perhaps location. Is it going to go beyond that in terms of weight in the car or driving habits? What, in your opinion—

Ms. CLAYBROOK. On the black box?

Mr. STEARNS. In the black box. It sounds like you want to expand it, and I think many people are concerned about how the federal government will handle this data. Say I can't opt out of the box

under your persuasion, then if it goes to the federal government, is this going to be public on the Internet? Should private citizens be able to go and see that about their neighbors who are driving? I mean, there are some privacy implications I think that I am concerned about.

Ms. CLAYBROOK. I really appreciate you asking the question because I certainly didn't mean to suggest that every crash that occurs should be publicly exposed on the Internet with the name of the person and their car and all the rest of it. The black box generally collects data 20 to 5 seconds before a crash and 5 to 10 seconds—

Mr. STEARNS. So it doesn't come on all during the whole time?

Ms. CLAYBROOK. No.

Mr. STEARNS. And so it is very, very limited time frame, and what it records is whether your foot was on the accelerator, whether it was on the brake, a lot of aspects of the engine itself, the speed of the vehicle and so on, and that data, what I am talking about having to go to the federal government, it would be only statistical data. All privacy information would be erased, so the federal government wouldn't even have it. It would just be statistical data. It would just be that a crash occurred and what the circumstances were so that you can then accumulate that data and say these are the kind of crashes that are occurring and these are the kind of remedies that we need to think about applying because of that. I do think it needs to be mandatory. I think it should be on every vehicle. Actually, General Motors, Ford and Chrysler readily reveal the contents of their black boxes in litigation because they think it is advantageous for them.

Mr. STEARNS. Well, I guess this committee would be concerned about the privacy. Let me move on. I have another question.

Mr. McCurdy, welcome to the committee. It is nice to see you. Eddie Towns and I dropped a bill on January 28, 2009, which would direct the Department of Transportation to issue regulations which would mitigate the safety hazard caused by near-silent hybrid and electric cars. I was in a parking lot going into the grocery store and I was just walking along with my BlackBerry and this car came up that was a hybrid and I didn't hear it, and it practically hit me, and so my question is, I think both General Motors and NHTSA have come up and proposed methods to address this, and I guess the concern of the ever-increasing desire now to have these cars that are hybrid and silent and you can't hear them. Winston Churchill almost got killed when he came to the United States and got off the wrong side of the road, and certainly if these cars are silent, he might not have been alive and so concerned with ever-increasing danger and sort of the inconsistency of the industry response so far. Do you think NHTSA needs to take further action to ensure an industry-wide solution, perhaps something like Congressman Towns and I, the bill we introduced which is called the Pedestrian Safety Enhancement Act of 2009. It has 210 cosponsors. It is H.R. 734.

Mr. MCCURDY. I know the bill well, and it is good to see you, Mr. Stearns. Actually we refer to this as the quiet car legislation, and concern. Actually I think we ought to recognize—I don't know if John is still here—John Pare from the National Federation of the

Blind. We at the Alliance have been working closely with NFB. Our member companies have been conducting acoustic testing. There are some challenges. You know, it is ironic, unintended consequences, but we have been pushed for years by some that say we have to reduce noise. We have been pushed by others to say we have to eliminate the internal combustion——

Mr. STEARNS. No one is ever happy.

Mr. MCCURDY. So we are moving, you know, rapidly to hybrid and electric technology and they are quiet, if not silent. I can't resist the point, though, when you say that you are walking along with your BlackBerry and don't hear it. It is a little bit of distracted walking, and we are mixing issues here, but we talk about distracted driving too. The point that——

Mr. STEARNS. But I am a pedestrian and I had the right-of-way with the hybrid.

Mr. MCCURDY. Actually I spoke to the NFB convention earlier in the year when they were in Detroit. I think they will tell you that we have reached out to them. We have worked closely with them. What we are trying to do is understand the challenges here, to really understand what the acoustic——

Mr. STEARNS. Is there a timeline? Can you give me a timeline?

Mr. MCCURDY. Well, we have been doing the research now. I think there are questions of length of implementation but I think we are not far from finding a solution.

Mr. STEARNS. A year, 2 years?

Mr. MCCURDY. It depends on front end and back. I think we are actually making real progress, and again, we want NHTSA to engage with us as well. So I think there is an opportunity for real stakeholder conversation here, and it is not confrontational at all. I think this is a question of really understanding the problem and bringing to bear the right science and engineering. But I think there will be a solution and I think it can be——

Mr. STEARNS. And you think NHTSA should have an industry-wide solution?

Mr. MCCURDY. It should be industry-wide. I think it is actually going to be global. I am involved internationally and I think Japan is——

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. MCCURDY [continuing]. Actively engaged and others will as well.

Mr. RUSH. I recognize Mr. Braley for 5 minutes.

Mr. BRALEY. Thank you, Mr. Chairman.

Mr. Stearns, there is a great episode on the TV show *The Office* where one of the characters engages in a low-speed chase with a Prius and sneaks up on one of the other characters, which demonstrates the importance of this legislation.

Mr. McCurdy, voluntary can be a relative thing, and you talked earlier about some of the voluntary changes the industry has made to respond to safety concerns but a lot of those changes that were made were also things that the industry initially resisted, and one of the great things about the country we live in, we have a system that allows people from all different walks of life to work together both in a public setting like through NHTSA and through our private enforcement methods to try to hold people accountable and

work together to improve the technology in automobiles. You mentioned that you had concerns about the use of electronic data recorder information and suggested it could lead to more litigation. I would challenge that statement because I believe if you had a system with standards for accessing and downloading that information and a clear understanding of what it represented, you could actually reduce litigation because right now much of the expense in a lot of these crash cases is people trying to understand how an accident occurred, how the occupant compartment was compromised and potentially contributed to the fatality or the severity of the crash. So one of the things that I am interested in hearing from you is, we have been talking about the standards for electronic data recorders and there has already been some proposals both by the Institute for Electric Engineers and also proposed regulations that NHTSA is considering, and it has been my impression that some members of your alliance have been objecting to the enactment of those regulations. Are you able to make a statement here at the hearing today on behalf of the Alliance that it supports the enactment of standardized regulations by NHTSA that govern the use of electronic data recorder information?

Mr. McCURDY. I believe we are moving in that direction. I will put it that way. I think the industry, there is well over 64 percent I think is the most recent number of 2005 models that have EDRs. I may have been confused on all the information. I think some of the early warning information is where we have some concerns. The type of information in the EDR is probably less of concern. But again, I think there can be movement on this, and again, I think the stakeholders and working with NHTSA have an opportunity. My hesitation was because of my experience in the electronic field is that again some people have a very simplistic idea of what that is. It is not quite as simple as just saying everyone is going to have a black box, but I think we are moving in that direction.

Mr. BRALEY. And Ms. Gadhia, I want to talk to you about that because in your written statement you said the EDR information must also be standardized and expanded, and Mr. Stearns began his question by asking Ms. Claybrook about the ownership of that data and assumed that it belonged to the owner of the vehicle, and yet during the early years of EDR data availability, the manufacturers frequently took the position that was proprietary information that belonged to them, not the person who paid for the automobile. So how do we move forward from this point to try to come up with a system that makes easily available and downloadable information that achieves the privacy concerns we are worried about but provides us with better data that helps us solve the underlying problems that lead to occupant injury?

Ms. GADHIA. As we noted in our written testimony that the NHTSA regulation is going to require EDRs to collect—the cars that do have EDRs to collect certain standardized amounts of data from 2013 model year cars. We would like to see that happen sooner. We think there is a utility to the information that they collect. But there are some privacy concerns about ownership of the data, as you mentioned, Representative Braley, and in the past Consumers Union has submitted comments to NHTSA as they were

considering the regulation that the final rule that they put forward in 2006 and I would be happy to share that with your office.

Mr. BRALEY. Please do. That would be much appreciated.

Ms. Claybrook, I want to finish with you. One of the things that we know from the medical field, there is a process called differential diagnosis, and that is when a physician is presented with a sick patient, they come with the hierarchy of the possible causes of their illness beginning with the most likely and descending to the least likely, and then the physician goes through a process of testing and evaluation to try to rule out what could be causing the illness to be able to reach a final diagnosis and a plan of treatment. And one of the concerns I have with the response we have seen to some of the problems with the Toyota recall is that the differential diagnosis that Toyota engaged in was limited, it appeared to many of us, to a mechanical failure, and they have now participated in massive recalls to address sticky accelerator pedals and problems with floor mats. And yet we still see reports of sudden unintended acceleration in vehicles where those retrofits have been made. So can you comment based on your experience as a former NHTSA administrator and as somebody involved in a long period of public safety advocacy on what you think needs to be done to get to the underlying cause?

Ms. CLAYBROOK. Well, Toyota is the only company, the only entity that can do that. They designed the vehicle, they created the software, they have software engineers who did it. The National Highway Traffic Safety Administration should not design the remedy. It never has in any case ever. And it doesn't have the capacity to do the kind of evaluation that is necessary to figure out what the underlying cause is. A lot of people have said that figuring out a software glitch is almost impossible in some cases, particularly if no marker is left that this glitch even occurred, a marker left in the computer. And so that is why a lot of people have talked about the brake override as the only possible solution because we just don't—at least we don't know, maybe Toyota does but we don't know what the problem is. I think it is very interesting that Toyota has said it is a floor mat recall of 5 million cars and yet the remedy that they are putting in most of those cars is not only to remove or fix the pedal and the floor mat but to put in a brake override system, which is an electronic fix. Why did they put an electronic fix in if it is the floor mat or the pedal? They say it is for customer, you know, so they will feel safe. I think it is because it is a software problem, and if the vehicles have been fixed with the floor mat and the pedal and the pedal and they still run away, then there is obviously another problem, and I think there are also vehicles that are not covered by the recall that may have these problems. They may not be identical. They may use different software so they are not identical problems. But there is no question in my mind that this is an electronic issue, and I think the company took the position early on that it wasn't because that hurts their sales with consumers. Consumers don't like software glitches they can't understand, and they couldn't change. Now if they change their mind, they are going to be subject to 18 U.S.C. 1001 lying to the government and going to jail. So they are in a very difficult posi-

tion. Why would they do that now that they have taken this position in the hardcore way that they have.

I was at a Senate hearing the other day and there were 21 people representing Toyota sitting in front of me, and I said to them, gee, you have a lot of lobbyists, and they said oh, no, no, these are all communications people. I think that they are looking at this as a communications fix as opposed to a real fix.

Mr. BRALEY. I want to thank all the witnesses for your impressive testimony and look forward to working with all of you as we move forward on these important issues, and I yield back, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentleman, and the Chair himself also thanks all the witnesses again for your patience and for your time that you have contributed to us. Your testimony has been invaluable as we proceed down this path for reauthorizing NHTSA, and the Chair thanks you and wants you to know that you have done a great service to the American people, the driving public, today.

Thank you very much. The subcommittee stands adjourned.

[Whereupon, at 4:10 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of Rep. Henry A. Waxman  
Chairman, Committee on Energy and Commerce  
NHTSA Oversight: The Road Ahead  
Subcommittee on Commerce, Trade, and Consumer Protection  
March 11, 2010**

Thank you, Chairman Rush, for holding this hearing. Last month, the Oversight and Investigations Subcommittee examined the recent Toyota recalls and the government response to sudden unintended acceleration. Today, we take the next step: we will examine the reforms needed at NHTSA.

NHTSA failed in its response to Toyota vehicles surging out of control. The indicators were there: NHTSA received thousands of consumer complaints as well as reports from a major insurance company indicating a trend. Several preliminary investigations were opened by NHTSA's Office of Defects Investigation, but the agency did not follow through. The scope of the investigations was too narrow. Engineers with the proper expertise were not engaged. The investigators relied too heavily on the company's claims about how its vehicles operate. And time and again the case was closed, while more complaints rolled in.

The lesson from the Toyota experience is that improvements are needed at the agency. NHTSA needs more resources, more expertise in emerging technologies, and stronger enforcement authorities. It also must provide better public transparency, strengthen its data collection, and exercise leadership. Let me just highlight a few of these needed reforms.

There is a definite resource problem at NHTSA. The budget for the programs that oversee safety, testing, investigations, enforcement, and recalls has been virtually frozen for ten years. During this time, millions of new cars have been put on the road.

There is also an expertise shortage. Cars are changing rapidly, but NHTSA has not changed along with them. Cars are now moving computers that are controlled by millions of lines of code. But NHTSA lacks electronics experts on staff. It looks for mechanical explanations when the evidence points to electronic defects.



NHTSA should have the capacity and the flexibility to stay ahead of technological change.

In addition, the agency has lacked strong leadership – at least until recently. I want to welcome Administrator Strickland to the agency and to this Committee. He has had a busy first two months on the job.

Administrator Strickland and Secretary LaHood have taken some important steps in recent months that demonstrate a commitment to protecting consumers and to ensuring the safety of vehicles on the road.

I respect that Administrator Strickland and Secretary LaHood have stood behind the agency and its staff. But the investigation into Toyota has shown that the status quo is not working. This Committee wants to work with them to strengthen the agency and ensure that it has the resources and the capabilities to investigate possible defects and enforce the law.

I look forward to the testimony today and expect that it will be useful to this subcommittee as it begins to develop legislation aimed at strengthening the agency. Chairman Rush, I look forward to continuing to work with you on this important issue.

**Opening Statement for CTCP Hearing “NHTSA Oversight: The Road Ahead” for  
Rep. Kathy Castor, FL-11**

- Thank you, Chairman Rush, and good morning to my colleagues. We are here today because recent events have forced all of us to question whether the National Highway Safety and Transportation Administration is capable of proactively addressing basic safety concerns.
- Not since the late 1990s when Ford Explorers were rolling over because of defective Firestone tires has a recall been the cause of so much alarm and anger.
- And justifiably so—39 deaths have been linked to runaway Toyotas, not to mention the injuries, both physical and emotional, that have lingered.
- When people are literally scared to death to get in their cars, you know you have a big job on your hands convincing them that you’re doing everything you can to protect their safety.
- In a recent CNN poll, 42 percent of respondents said the federal government's response was slow. We can do better.
- Today’s hearing gives us a chance to prevent the Toyota fiasco from happening again, to the best of our abilities.
- What we need to know now is what NHTSA’s capabilities are and what can be done to strengthen the oversight system as a whole.
- To put it simply: does NHTSA have the regulatory strength required to effectively protect American consumers?

- And does NHTSA have the budget and manpower to carry out its mandate to save lives, prevent injuries, and reduce the economic cost of crashes?
- Or, as many have claimed, has it delegated that authority to carmakers and relied too heavily on their data and resources?
- On the point of strength, NHTSA usually relies on voluntary recalls to address defects.
- It has the authority to issue mandatory recalls but hasn't done so since 1979.
- And in many cases, voluntary recalls have gotten the job done, saved lives, and kept costs to the public and the Administration down.
- In other cases, though, such as the Firestone and Toyota recalls, we have to wonder if NHTSA used its authority to the fullest extent of the law in defense of consumer safety.
- So, what is the process that NHTSA follows to determine if it should take action?
- Well, the Office of Defects Investigation inside NHTSA has to wade through thousands of consumer complaints each year to determine if a recall is the most effective way to protect drivers.
- Following up on these complaints takes considerable time, money, and staff, which ODI seems to have very little of these days.

- In fact, former Administrator Joan Claybrook, who is testifying today, recently explained to Congress that in the 1970s, 119 people worked in the enforcement division of NHTSA.
- Today, there are just 57 staffers assigned to enforcing the rules of the road.
- And sometimes it has just been easier and cheaper to listen to what the manufacturers say about their own cars.
- The Washington Post recently reported that officials have at times minimized or simply rejected consumer accounts of what happened in favor of the manufacturers' assessments.
- Which leads us to ask what can be done to improve NHTSA's oversight authority and the resources it has to step up its efforts.
- My hope is that we will leave here today with solutions and not just more questions.
- Thank you all. I look forward to the testimony of our witnesses, and I yield the balance of my time.

**Statement of the Honorable Joe Barton  
Ranking Member, Committee on Energy & Commerce  
March 11, 2010  
“NHTSA Oversight: The Road Ahead”**

Thank you, Chairman Rush for calling this timely hearing on the oversight of NHTSA. I strongly believe that it is our primary job to investigate when problems appear, determine what went wrong, and make adjustments as necessary.

I'd like to start my comments by praising NHTSA for its role in shepherding us into the safest period in automobile history. Despite record numbers of drivers on the MVA rolls and record number of cars on the road, we have the lowest number of both fatal crashes and automobile-related fatalities in history.

That said, in recent weeks, it has become clear that something went terribly wrong with certain Toyota vehicles. What is not so clear is whether this was a regulatory failure. We have heard a wide range of criticisms identifying problems -- from the relationship between industry and its regulator, to a revolving door at the agency, to a lack of sufficient authority, to a reluctance to use its existing authority, to a lack of strong enough penalties that would “scare” industry into doing the right thing – “or else.”

At the other end of the spectrum, we've heard that NHTSA has adequate resources and powers, but that the facts haven't changed and therefore neither

would the agency's actions – there still isn't enough information to identify the cause of the safety issue to support a mandatory recall.

Whatever the cause may be, I want to caution against knee-jerk reaction. Some folks never met a regulation they didn't love, or a problem that couldn't be fixed by a lot more government. But as recent history has shown with the CPSIA bill, there's quite a difference between careful legislating and meddling. There's certainly a problem to be solved here, and the Department of Transportation's Inspector General has launched an investigation into NHTSA's handling of the Toyota recalls. I hope that if we move down the road toward altering NHTSA's authorities, we would await the results of that investigation instead of throwing quickie so-called "solutions" at the wall and hoping one of them sticks. We'll be prouder of the outcome if we identify the actual problem before we try to fix it.

As I said moments ago, there is no question there was a failure here. Our job is to determine where that failure occurred. Is it a safety standard failure? Is it operator failure? Is it a regulatory failure? If NHTSA simply didn't properly use the tools it already has – or a "system failure" as one witness described it at the O&I hearing – there is no need, particularly in this fiscal climate, to throw good money after bad. Our job is to find the problem (if there is a problem) and fix the problem, not just throw money at the problem.

Again, Mr. Chairman, I'd like to thank you for holding this timely hearing in the interest of protecting all of us on the road, and a thank you to our witnesses today for giving their time and expertise to help us with that goal.



**QUESTIONS FOR THE RECORD**  
for Administrator David L. Strickland  
Committee on Energy and Commerce  
U.S. House of Representatives  
March 11, 2010 Hearing  
“NHTSA Oversight: The Road Ahead”

**Questions from Congressman Dingell**

*I. Sufficiency of Existing NHTSA Authorities and Resources*

**QUESTION 1:** Are the reporting provisions of the TREAD Act being effectively implemented by NHTSA and automobile manufacturers? Please explain your response and submit supporting materials for the record.

**RESPONSE 1:** The reporting provisions of the TREAD Act have been effectively implemented. In 2002, NHTSA first published its Early Warning Reporting (EWR) regulations requiring that motor vehicle and equipment manufacturers report certain early warning data quarterly – production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports and product evaluation reports) involving specified vehicle components, a fire, or a rollover. Since 2002, NHTSA has amended the EWR regulations. Also, as required by the TREAD Act, NHTSA has issued a regulation requiring manufacturers to report to NHTSA foreign recalls or other foreign safety campaigns covering an identical or substantially similar motor vehicle, motor vehicle equipment or tire; to require manufacturers to submit annual lists of substantially similar vehicles; and to make EWR reporting more efficient and focused. On an ongoing basis, NHTSA reviews the reporting requirements and our analytical methods to determine whether additional requirements or improvements are necessary to identify potential safety concerns more effectively and efficiently, and intends to implement those changes as necessary.

The Early Warning Division of NHTSA’s Office of Defects Investigation (ODI) reviews and analyzes a huge volume of early warning data and documents submitted by manufacturers. ODI uses other sources of information (such as consumer complaints from vehicle owner questionnaires (VOQs) and manufacturers’ own communications) as well as EWR data to identify and investigate potential safety defects. NHTSA has utilized EWR data to assist in opening 110 defect investigations, which resulted in over 11 million recalled vehicles and equipment. Specifically, EWR data has prompted the opening of 28 defect investigations, accelerated the opening of 30 defect investigations, and supported the opening of 52 other defect investigations. We believe that these facts demonstrate the effective implementation of the reporting provisions of the TREAD.

**QUESTION 2:** Did the TREAD reporting system accomplish what was necessary to protect the public safety in the recent Toyota recall cases? If not, please provide for the record where and how the system failed, both at NHTSA and Toyota.

**RESPONSE 2:** NHTSA receives significant information from manufacturers that submit EWR data. Light vehicle manufacturers producing 5,000 or more vehicles annually are required to report U.S. and foreign death incidents and U.S. injury incidents based on claims and notices to the manufacturer and total counts of property damage claims, warranty claims, consumer complaints, requests or demands for relief related to a crash received by the manufacturer, and field reports. In addition to providing counts of field reports, manufacturers must also provide actual copies of the field reports.

Manufacturers report information under 20 general components or system categories. Unintended acceleration issues normally would be included under the speed control component. We note that not all speed control issues are unintended acceleration. Speed control may include other acceleration issues such as problems with the cruise control. In addition, incidents of unintended acceleration may also have been reported under another component, such as brakes.

Since mid-2003, Toyota has reported claims and notices of 17 deaths and 352 injuries, under the speed control component in EWR through the fourth quarter of 2009. Toyota has also reported 141,141 warranty claims, 11,321 consumer complaints, 1,328 field reports (including dealer field reports), and 622 property damage claims in the EWR aggregate data for speed control. In addition, Toyota has submitted 381 speed control field reports through the fourth quarter of 2009.

Compared to other manufacturers, Toyota has not reported the highest number of speed control deaths and injuries, and Toyota does not have the highest rate of "speed control" deaths and injuries. Toyota has the fourth highest rate of speed control deaths and injuries based on the manufacturer's average quarterly production volume. Overall, Toyota speed control aggregate data does not stand out from its peers.

Although EWR data collected in accordance with the TREAD Act is very important, it is not the leading source of information that NHTSA uses to spot defect trends. Complaints from consumers are still a more important source and can even provide earlier warning of a problem than EWR data because consumers often report their problems to NHTSA immediately allowing the agency to review those reports soon after an incident. EWR data are submitted by manufacturers quarterly and reflect information received by the manufacturer some months previously. In the Toyota situation, just five consumer complaints were enough to trigger an investigation into the use of all-weather floor mats in 2007, which were causing high-speed, open throttle incidents. On the other hand, a small number of EWR reports pointed NHTSA to a concern with a trim panel that, when loose, was causing unintended acceleration in Sienna vans. In both cases, NHTSA's investigations led to recalls. Therefore, we believe that EWR data along with other information available to NHTSA, such as consumer complaints, is adequate to enable NHTSA to protect the public from potential safety defects.

**QUESTION 3:** Is there any critical data or source of data needed by NHTSA that is not currently provided to it under the TREAD Act or other reporting requirements for automobile manufacturers? If so, please describe this data and what is required for NHTSA to obtain it.

RESPONSE 3: NHTSA does not believe there is any critical data or source of data that is not currently provided to NHTSA under the TREAD Act or that NHTSA could not require submission of under current authority. However, on an ongoing basis, NHTSA reviews the reporting requirements and our analytical methods to determine whether additional requirements or improvements are necessary to identify potential safety concerns more effectively and efficiently. Based on recent reviews, we believe that some component categories could be refined to provide more useful information on technologies recently introduced into the market, particularly crash avoidance technologies that are heavily dependent on electronics, and we plan to amend the rule to require manufacturers to report on these additional categories. We are also considering expanding the reporting requirements to cover actions taken by manufacturers concerning vehicle components that are used in vehicles sold here even if not used in a substantially similar vehicle. This would ensure NHTSA's awareness of a problem involving a common part, even if used in dissimilar vehicles.

QUESTION 4: Do you believe NHTSA made mistakes in its response to the recent Toyota recalls? Likewise, should NHTSA have pushed Toyota to initiate recalls earlier than it did?

RESPONSE 4: NHTSA's objective in conducting investigations is to determine if there is a defect that poses an unreasonable risk to motor vehicle safety in a particular vehicle or series of vehicles. During the relevant time period, NHTSA's screening process separately identified instances of pedal entrapment in other Toyota vehicles such as the Lexus ES350 (via all weather floor mat interaction with the pedal) and the Sienna (via trim panel movement). This work led to investigations which ultimately influenced Toyota to conduct safety recalls in the affected vehicles.

In March 2007, NHTSA opened an investigation into pedal entrapment by floor mats in MY 2007 Lexus ES350 vehicles based on five complaints. Toyota maintained that the vehicles and the all-weather floor mats did not contain a defect because in all the identified incidents, the floor mats were not properly installed in the vehicle. After upgrading the investigation and many discussions and meetings with Toyota, NHTSA influenced Toyota's decision to issue a recall of the floor mats in September 2007. NHTSA made sure that the replacement floor mats were shaped in such a way that, even if not properly installed, they could not entrap the accelerator. After the fatal San Diego crash in August 2009, there was evidence of further pedal entrapment. In light of the severity of the potential consequences of pedal entrapment, NHTSA pursued the matter with Toyota, insisting on a vehicle-based remedy, and Toyota issued a pedal recall.

NHTSA pursued recalls with Toyota when the agency had information pointing to a safety defect. However, at least in the recall of the sticky pedal in Toyota vehicles, Toyota failed to notify NHTSA of safety defects in a timely manner as required by law. As a result, Toyota has agreed to pay nearly \$16.4 million in civil penalties. NHTSA still has two additional investigations pending (a Timeliness Query investigation of the pedal entrapment recall and a Recall Query investigation into the scope of both recalls) to determine what Toyota knew about each of these problems and when Toyota knew it, as well as whether the scope of each recall was appropriate and the remedies effective.

QUESTION 5: What authorities does NHTSA lack, whether under the TREAD Act or otherwise, with which to address defects in automobiles deemed hazardous to the public safety?

RESPONSE 5: We have been reviewing our statutory authorities, looking at such issues as: Are the current civil penalties adequate to serve as a deterrent? Would the public be better served if, in the rare case of a truly imminent hazard, NHTSA could issue a recall order more promptly and with quicker judicial review than under current law? Are there ways to improve the ability of consumers to file complaints with NHTSA or enhance the information we receive from manufacturers and, do any of those possible improvements require legislative change? We look forward to working with the committee in evaluating how NHTSA's ability to perform its safety mission might be strengthened through legislation.

QUESTION 6: Does NHTSA have in place a ranking system for determining the priority of defects investigations? If so, please describe this system. If not, please explain why no such system is in place. Further, if no such system is in place, should one be, and how should it be structured? Should it be mandated under statute?

RESPONSE 6: We believe that our safety defect screening and investigation process works well in identifying, investigating, and remedying safety defects in the field. NHTSA's process is data-driven, and decisions are based on input from around the agency. NHTSA uses the basic principles of risk analysis when deciding what issues to investigate and which investigations involve issues that should be the subject of a safety recall. Under those principles, the risk involved in a situation can be determined by considering both the frequency of the potential harm and the severity of the potential consequences of the harm. During both the pre-investigation and investigation processes, NHTSA applies these risk analysis principles, including an analysis of the frequency and severity of the possible defect.

At the pre-investigative stage the analysis is focused on spotting possible defect trends that might warrant an investigation. A frequency assessment provides information regarding current failure rates and, often, data from peer vehicles or from prior similar investigations and recalls. A failure trend may be included as part of the frequency assessment to show if complaints are increasing, decreasing or constant as a function of time in service. The severity assessment provides an analysis of the harm that has resulted from the failures that have already occurred and the potential for harm to occur in the future. The harm is measured not only by the number of crashes, fires and injuries that have occurred, but also by their severity and the likelihood that similar events will occur. In general terms, then, this process is designed to surface for investigation the issues presenting a significant degree of safety risk, with priority given to those that may pose the highest risk.

Once an investigation has been opened, managers and investigators on an ongoing basis review the entire list of pending investigations to identify those that seem to entail the highest or most immediate safety risks. Managers then focus staff investigators on moving those investigations more quickly and communicating to the manufacturers the agency's perception of urgency, without lessening pressure on other investigations. Any ranking system would seem to be based on similar ideas of comparative risk. However, the agency does not use systems that would publicly identify some investigations as lower priority (as any ranking system would have to do)

to reduce the likelihood that manufacturers would delay safety recalls based on a low ranking. Also, because the agency's perception of the risk entailed in a particular investigation often changes as it receives more information, the necessity to change rankings periodically would be inefficient and increase the risk of confusion to the public. We believe that our flexible application of risk analysis principles serves to prioritize the most important matters and that a mandated ranking system would not benefit safety.

QUESTION 7: There seems to be broad agreement about the need to increase the resources available to NHTSA to carry out its mission. Could you suggest by how much NHTSA's budget should be increased, as well as the rationale for this amount?

RESPONSE 7: The President's FY 2011 budget requests 66 additional personnel to help strengthen our ability to address safety issues on the nation's roadways. If approved and funded by the Congress, the agency plans to use those positions where they are needed to ensure that the agency is meeting its various safety responsibilities, including additional resources to the Office of Defects Investigations.

## *II. Penalties*

QUESTION 1: Are the civil penalties NHTSA is allowed under statute to assess sufficient for the agency to deter non-compliance by automobile manufacturers? Please explain your answer.

RESPONSE 1: No. We believe that the maximum civil penalties should be increased. They are but a very small percentage of the manufacturers' finances.

QUESTION 2: Are there additional criminal penalties that the Congress should consider allowing NHTSA to impose on automobile manufacturers? If there are, please name and discuss them.

RESPONSE 2: No.

QUESTION 3: Are you concerned that the threat of criminal penalties will chill communications between manufacturers and NHTSA? Please explain your response.

RESPONSE 3: No.

## *III. Domestic vs. Foreign Automobile Manufacturers*

QUESTION 1: My questioning of James Lentz, Toyota's chief of sales for North America, revealed that decisions to recall Toyota vehicles sold in North America are made in Japan. I am concerned this is a threat to public safety in this country. Do you agree?

RESPONSE 1: We do not necessarily believe that because Toyota's recall decisions are made in Japan, that this alone constitutes a threat to public safety. We note that other foreign

manufacturers who make recall decisions outside the United States are better at facing up to recall decisions.

Rather, we are concerned with Toyota's pattern of behavior of sitting on matters and pushing back in investigations, including situations where the consequences of inaction could result in harm to the public. It was difficult to engage in productive discussions with Toyota not only because the Washington Office of Toyota, with whom the agency communicated, had no authority to make decisions, but also because we believe that the decision-makers in Japan gave insufficient weight to information that was passed on to Toyota in Japan. NHTSA expressed our concerns during the December 15, 2009 meeting between NHTSA and Toyota officials in Japan.

QUESTION 2: How should this be corrected? For example, should foreign automobile manufacturers that sell vehicles in the United States be required to empower their personnel here to initiate recalls?

RESPONSE 2: As stated above, some foreign manufacturers that make recall decisions outside the United States have better decision-making processes than Toyota. Because these other foreign manufacturers seem to make more timely safety decisions, we believe that the culture of the company and its understanding and respect for the laws of the United States are more important than the geographic location.

Recently, Toyota announced a fundamental change in the way Toyota responds to safety concerns. Toyota established a Special Committee for Global Quality and added a system to better share safety information and to work more closely with government agencies. Toyota also announced that its North American operations will have more autonomy and decision-making power with regard to recalls and other safety issues. These structural changes may improve Toyota's performance on safety recall issues, but the attitude of the company and its employees with regard to adhering to the company's obligations under our law is likely to be far more important than structure.

QUESTION 3: Is there a quantitative difference in response times between domestic and foreign automobile manufacturers to NHTSA data inquiries? If so, what do you believe is the cause for this?

RESPONSE 3: Domestic manufacturers are usually allowed six weeks to respond to an information request and foreign manufacturers are usually allowed seven weeks. Foreign manufacturers may have additional issues that may delay response, such as document translation. Nevertheless, generally there has not been a significant difference between domestic and foreign response times for information request letters.

QUESTION 4: Is there a quantitative or qualitative difference in the data provided to NHTSA by domestic and foreign automobile manufacturers? If so, what do you believe is the cause for this?

RESPONSE 4: There are some differences in the way the manufacturers present data, but generally the data have been similar. This is a company specific issue, and does not appear to be related to a company's foreign or domestic status.

#### *IV. Conflict of Interest Rules*

QUESTION 1: Are NHTSA's current conflict-of-interest rules sufficient to protect the agency from undue influence from former staff? Please briefly explain your answer.

RESPONSE 1: Current and former NHTSA employees are subject to the government-wide post-employment restrictions found in criminal law and the rules of the Office of Government Ethics. Under these existing restrictions, all former federal employees are permanently restricted from appearing before the government about a specific project on which they worked while a federal employee. These rules are designed to avoid conflicts of interest without unduly limiting employment of federal employees in their areas of expertise when they leave the government. We do not believe that these government-wide conflict of interest rules have had any negative impact on the Toyota matters or on any other defect investigation.

QUESTION 2: If you believe this is not the case, should new conflict-of-interest rules be codified in statute, or should that be left to the NHTSA to set for itself?

RESPONSE 2: As noted above, we do not believe that government-wide conflict of interest rules applicable to all Executive branch employees have had any negative impact on the Toyota matters or on any other defect investigation. To the extent that ethics requirements are changed, we believe that any additional post-employment restrictions should have government-wide application.

#### **Questions from Congresswoman Sutton**

QUESTION 1: Do you think the current cap of \$16.5 million on the civil penalties that NHTSA can levy on a manufacturer for failure to comply with NHTSA regulations is adequate for the types of situations such as the Toyota recalls of over 8 million vehicles? What might be a more appropriate cap on such fines?

RESPONSE 1: We think the current cap limits the deterrent effect of civil penalty actions with regard to large corporations. If Congress decides to raise the cap, it should be at a level that would provide a deterrent to such companies in situations that warrant a significant penalty.

QUESTION 2: Do you believe that the reporting of data under the TREAD Early Warning System has provided data and information that has helped improve vehicle safety?

RESPONSE 2: The agency believes the information reported by manufacturers to NHTSA is useful for identifying potential safety defects in the affected vehicles in the U.S. Since 2004, the first full year in which NHTSA received Early Warning Reporting (EWR) data, the Office of Defects Investigation (ODI) has used the EWR data to assist in our safety-defect identification

investigation process. NHTSA has utilized EWR data to assist in opening 110 defect investigations, which resulted in over 11 million recalled vehicles and equipment. Specifically, EWR data has prompted the opening of 28 defect investigations, accelerated the opening of 30 defect investigations, and supported the opening of 52 other defect investigations

QUESTION 3: Are you able to effectively process all of the Early Warning Data that the manufacturers provide today? Does the current analytical capability allow you to effectively process the volume of Early Warning and other data that NHTSA receives from automakers and other sources?

RESPONSE 3: We believe that ODI is able to effectively process the EWR data that manufacturers report to NHTSA. ODI has developed and implemented a number of analytical methods to process the EWR data and identify potential safety-related defects. ODI reviews these analytical methods and improves them to help identify trends and data that are outside the norm that are potentially related to safety defects. For example, one of the methods ‘improves itself’ each quarter; the Bayesian Filter evaluates field reports using a computer program with probability formulas that considers how similar each field report is to ones that were previously identified as likely or not likely to indicate a safety-related defect. Each quarter, new field reports are added to help continuously improve this filter.

QUESTION 4: Do you believe that there is substantially more Early Warning type data available to be collected that is not collected today?

RESPONSE 4: At this time, NHTSA does not believe there is substantially more Early Warning type data that the agency is not collecting. However, NHTSA reviews the reporting requirements and our analytical methods to determine whether revisions to what is reported are necessary to identify potential safety concerns more effectively and efficiently. Based on recent reviews, we believe that some component categories that are reported could be refined to provide more useful information on technologies recently introduced into the market, and we plan to amend the rule to require manufacturers to report on these additional categories.

QUESTION 5: Can you tell me some of the areas in which NHTSA expertise might be missing or less effective than it could be? Is there readily available talent to fill these shortcomings in the current staffing?

RESPONSE 5: NHTSA has a diverse and experienced workforce with extensive experience in automobile safety, including experts conducting defects investigations and experts researching and testing vehicle safety at NHTSA’s Vehicle Research and Test Center. NHTSA does not hesitate to reallocate resources within the agency’s current staffing ceiling as necessary. In addition to our staff, NHTSA hires contractors to support our work when there are areas where we need specialized expertise.

The President’s FY 2011 budget requests 66 additional personnel to help strengthen our ability to address safety issues on the nations’ roadways. If approved and funded by the Congress, the agency will use those positions where they are needed to ensure that the agency is meeting its various safety responsibilities.



QUESTION 6: Among the stated objectives of the Department of Transportation (DOT) is to prevent crashes before they actually occur and, therefore, reduce fatalities and injuries. As part of these efforts, DOT has examined the potential for advanced safety systems to assist in preventing heavy vehicle crashes. I understand that the National Highway Traffic Safety Administration (NHTSA) intends to proceed with a rulemaking on stability control for commercial vehicles in 2010. Please provide an update on the status of the agency's internal deliberations. When does NHTSA plan to release the Notice of Proposed Rulemaking (NPRM)?

RESPONSE 6: In December 2009, consistent with our 2009-2011 Rulemaking and Research Priority Plan and the 2009 DOT Motorcoach Action Plan, NHTSA tentatively decided to pursue a regulatory requirement for stability control systems on truck tractors and motorcoaches. We do not expect to publish the NPRM in 2010. Currently, we are working on developing a NPRM, including an estimated timetable for publishing the NPRM.

QUESTION 7: Please summarize the highlights of the agency's research on stability control systems for commercial vehicles. I believe that NHTSA's studies, released in October 2009, indicated that Electronic Stability Control (versus Roll Stability Control) would save more lives, avert more injuries and overall – prevent approximately 4,659 truck crashes from occurring. Clearly, it is important that – if the agency decides to mandate – it should mandate the more robust technology and seek to extract the maximum societal benefit from this rulemaking.

RESPONSE 7: NHTSA's research program on stability control systems for commercial vehicles focuses on two main areas: (1) estimating the safety benefits of stability control systems and (2) developing performance requirements and objective tests.

Safety benefits research:

- Combination vehicles (tractor semitrailers): NHTSA completed a combination vehicle stability control report ("Safety Benefits of Stability Control Systems for Tractor-Semitrailers" (DOT HS 811 205)) in October 2009. This report estimated that Roll Stability Control (RSC) systems could reduce 3,489 crashes and 106 fatalities annually. The report also estimated that Electronic Stability Control (ESC) could reduce 4,659 crashes and 126 fatalities annually.
- Single Unit Trucks and Buses: NHTSA is performing similar research to estimate the benefits of stability control systems for straight trucks and buses and a final report will be published in early 2011.

Performance requirements and objective test development:

- Combination vehicles (tractor semitrailers) and motorcoaches: NHTSA has completed research to develop performance requirements and objective tests for tractor semitrailers and motorcoach vehicles and expects to publish final reports documenting this research later this year (2010).
- Single Unit Trucks and Buses: Research is underway and scheduled to be completed in 2011.

QUESTION 8: Has the agency made a decision regarding which type of technology it will mandate? ESC – Electronic Stability Control (commercial vehicle stability technology that helps mitigate rollovers and loss-of-control crashes) or RSC – Roll Stability Control (commercial vehicle stability technology that only helps mitigate rollovers)?

RESPONSE 8: NHTSA has not made a final decision yet. NHTSA has been conducting research on both types of stability systems and is reviewing this research.

QUESTION 9: NHTSA is required to complete a rigorous cost-benefit analysis for each of its regulations. Has the agency commenced this process relative to the expected stability control rulemaking? Is NHTSA taking into account the financial benefit that would be accrued from preventing the associated commercial vehicle crashes?

RESPONSE 9: NHTSA has started the process of analyzing the costs and benefits of regulating stability control in commercial vehicles. In October 2009, NHTSA released a report ("Safety Benefits of Stability Control Systems for Tractor-Semitrailers" (DOT HS 811 205) that contained preliminary costs and benefits information. We are performing further analyses to measure the costs and benefits associated with any proposal, including the reduction of fatalities, injuries, property damage and travel delay as a result of preventing crashes.

QUESTION 10: The Department of Transportation's (DOT) Motorcoach Safety Action Plan, released in 2009, indicated that NHTSA would "develop performance requirements and assess the safety benefits for stability control systems on motorcoaches to reduce rollover events" in the fourth quarter of 2009. DOT highlighted this activity as a priority given that "rollover crashes involving motorcoaches account for the largest portion of fatalities at 37 percent." What is the status of these efforts? Has NHTSA made a decision to proceed with a rulemaking on ESC stability control systems for motorcoaches as it indicated in this action plan? If so, would the agency seek to conduct this rulemaking in tandem with the regulation concerning commercial vehicles?

RESPONSE 10: NHTSA has developed performance requirements and assessed safety benefits of ESC systems on motorcoaches as well as on tractor-semitrailers. In December 2009, consistent with our 2009-2011 Rulemaking and Research Priority Plan and the 2009 DOT Motorcoach Action Plan, NHTSA tentatively decided to pursue a regulatory requirement for stability control system on truck tractors and motorcoaches. We are working on developing a plan for an NPRM and have not yet decided on a publication date for the NPRM.

QUESTION 11: Is NHTSA considering a rulemaking on Tire Pressure Monitoring Systems for heavy vehicles? I am aware that the National Transportation Safety Board (NTSB), as part of its report on an August 2008 motorcoach crash, has recommended that tire pressure monitoring systems be required for all motor vehicles weighing more than 10,000 pounds.

RESPONSE 11: NHTSA and DOT's Federal Motor Carrier Safety Administration (FMCSA) are conducting research on heavy truck tire pressure monitoring systems (TPMS) technology, functionality, test procedures, and performance criteria. Currently, FMCSA is conducting a field operation test that is expected to be completed in 2010. This assessment will be used to develop

a cost/benefit assessment of TPMS for heavy vehicles, and is expected to help NHTSA determine the possible next steps, including whether rulemaking should be considered. Any regulation promulgated by NHTSA would apply to new vehicles.

**QUESTION 12:** The NTSB has also issued recommendations in favor of collision warning systems with active braking for commercial vehicles. Is NHTSA conducting research on these systems and developing performance standards for them? If so, what is the status of this research? Has the agency considered a potential rulemaking on these systems?

**RESPONSE 12:** NHTSA is researching collision warning systems that incorporate active braking, also referred to as collision mitigation braking (CMB) systems. Currently, we are performing a test track evaluation of commercially available CMB systems, and we expect to complete the initial evaluation of their performance capabilities in 2010. NHTSA plans to conduct follow-up research to develop performance requirements and objective tests in 2010-2011. In addition, NHTSA is conducting research to evaluate the potential costs and benefits of CMB systems, and this research is expected to be completed in 2011. Based on this research, NHTSA will determine the appropriate next steps for collision warning and active braking systems.

#### **Questions from Congressman Barton**

**QUESTION 1:** Please describe the criteria NHTSA uses to decide which investigations to initiate based on risk of harm and in what priority those criteria are considered.

**RESPONSE 1:** NHTSA uses basic principles of risk analysis when deciding what issues to investigate and which investigations involve issues that should be the subject of a safety recall. Under those principles, the risk involved in a situation can be assessed by considering both the frequency of the potential harm and the severity of the potential consequences of the harm. At the pre-investigative stage, the analysis is focused on spotting possible defect trends that might warrant an investigation. A frequency assessment provides information regarding current failure rates and often data from peer vehicles and from prior similar investigations and recalls. A failure trend may be included as part of the frequency assessment to show if complaints are increasing, decreasing or constant as a function of time in service. The severity assessment provides an analysis of the harm that has resulted from the failures and the potential for harm to occur in the future. In general terms, then, this process is designed to surface for investigation the issues presenting a significant degree of safety risk, with priority given to those that may pose the highest risk.

**QUESTION 1a:** NHTSA received approximately 2,000 consumer complaints of unintended acceleration in 2009. Please state where the reports regarding Toyota vehicles fall in relation to all complaints of unintended acceleration from all other manufacturers.

**RESPONSE 1a:** Consumer complaints to NHTSA are not labeled with a condition code that identifies the various conditions referred to as unintended acceleration. To identify possible complaints of unintended acceleration, NHTSA used a broad keyword search of complaint narratives. The results, therefore, included reports alleging a variety of conditions reported by

drivers. The search criteria were deliberately over inclusive and, as a result, some of the complaints captured by the search do not include sudden acceleration. Of the 2009 complaints, this search identified a total of 1,985 complaints from all vehicle manufacturers. This figure constitutes approximately 5 percent of all safety defect complaints in 2009.

Of the 1,985 complaints, Toyota had the highest number (649) of such complaints, accounting for approximately 33 percent of the total. Ford had the next highest number of such complaints with 355, accounting for 18 percent of the total. The remaining manufacturers accounted for much smaller portions of the total.

We note that of the 1,985 Toyota-related complaints in 2009, the majority of the complaints (73 percent) were received during a four-month period after the tragic crash in San Diego in August 2009, which received considerable publicity. Before August, Toyota's share of the complaint volume relative to other manufacturers, while higher, did not stand out.

QUESTION 1b: Please state whether NHTSA plans to investigate any of the complaints of unintended acceleration for a make and model other than Toyota.

RESPONSE 1b: NHTSA has reviewed and continues to review the complaints of unintended acceleration in other vehicles. We are monitoring the complaints to determine whether to open investigations into unintended acceleration in other vehicles. As a result of our ongoing monitoring, on April 29, 2010, we opened an investigation into the 2007 Dodge Calibers for a sticky accelerator pedal condition. The condition in the Caliber pedal, which involves parts that loosen and can lead to a stuck accelerator, is not the same as the defect in the recalled Toyota vehicles.

QUESTION 1c: Please explain how NHTSA factors new problems presenting in vehicles that have been on the road for more than a decade in the context of determining whether there is a problem with newer models. For instance, at least two of the Toyotas identified in the timeline NHTSA provided to this Committee were more than 10 years old at the time of the incidents.

RESPONSE 1c: In most cases, problems in vehicles that are over a decade old bear little relevance to issues of unintended acceleration in newer models. On average, light vehicles at this age have expended most of their useful service lives, and the accumulation of a decade or more of service by a particular vehicle is likely to have a greater effect on the vehicle's safety than any potential latent safety defects. The two vehicles identified in the timeline provided to the Committee were a 1989 Camry involved in a fatal crash at the end of 2003 and a 1996 Avalon involved in a fatal crash in mid 2009. NHTSA generated that timeline using broad parameters – fatal incidents in which a vehicle-based cause of unintended acceleration was alleged. In those two incidents, vehicle age and older technology (mechanical throttles) placed those vehicles outside the scope of the recent attention applied to electronic throttle control systems. However, NHTSA is conducting further follow-up and review of the incidents listed in the timeline as part of its broader effort to uncover the causes of unintended acceleration.

QUESTION 1d: Please describe how imposing strict mandatory recall triggers would impact NHTSA's effectiveness at identifying risk and prioritizing investigations, particularly if the Office of Defects Investigation cannot determine whether a defect exists. Please state whether you believe mandatory recall triggers would save lives, particularly if a problem has not been or cannot be identified.

RESPONSE 1d: The Office of Defects Investigation (ODI) considers a significant amount of information -- the frequency of the failures (raw numbers, failure as a percentage of the population, failure rate after a specific amount of time in service) and a review of the severity of the consequences of failures (crashes, injuries, fatalities). Different types of failures in different systems pose different levels of safety risk for reasons not necessarily related to the frequency of the failure. For example, a loss of steering is extremely severe and just a few reports would trigger an investigation, whereas reports concerning extended stops would require more analysis to understand the reports and ensure that they are truly a safety defect. If strict mandatory recall triggers based on frequency of complaints were imposed, a number of problems would ensue. Complaints by consumers, of course, are of varying quality. Consumers' descriptions and their attribution of the experience to a particular cause is not necessarily based on any expertise. Triggering investigations based solely on the number of such complaints would ignore the severity portion of the risk and commit agency resources to matters that may be frequent but not of significant risk. Those resources might well be diverted from investigations involving lower frequency but higher potential severity.

We believe that mandatory recall triggers would not necessarily save lives. If a safety-related defective component or system could not be identified, the manufacturer may not be able to take the appropriate action to remedy the defect. Even in instances where a defect is identified, the manufacturer may still dispute the severity of the problem and whether it meets the legal requirements to classify the problem as an "unreasonable risk" to highway safety.

QUESTION 2: In her testimony before the Government Reform Committee, Ms. Claybrook characterized NHTSA as a "lapdog" as opposed to a "watchdog," alleged that industry views NHTSA with contempt, and criticized the agency for not using its subpoena power in decades. According to industry observers, this is because cooperation and communication between industry and the agency are at an all-time high with the advent of the safety database and other TREAD Act improvements. Please state whether you agree with Ms. Claybrook's assessments. If not, please explain your response.

RESPONSE 2: We disagree with Ms. Claybrook's characterization of NHTSA as a "lapdog." We note that since Ms. Claybrook's departure in 1981, the agency has influenced 2,777 recalls affecting over 281 million vehicles and items of equipment. The pace of vehicle recalls influenced by NHTSA investigations in recent years compares quite favorably to what it was during Ms. Claybrook's tenure. NHTSA takes its enforcement responsibilities seriously. During an investigation, NHTSA compels manufacturers to submit information through NHTSA's process of issuing requests for document production and responses to questions. We have found that these formal requests are a better way to obtain the information we ask for than issuing subpoenas.

QUESTION 3: Numerous critics have chastised NHTSA for not using its subpoena power or mandatory recall authority more frequently. However, the agency frequently issues Information Requests and has facilitated thousands of voluntary recalls. Please describe the compulsory nature of these requests, whether NHTSA issues these requests as an alternative to subpoenas, and why NHTSA so frequently issues these requests versus a subpoena.

RESPONSE 3: NHTSA compels manufacturers to answer questions and produce documents under its authority to require manufacturers to make reports in 49 USC § 30166(e). This authority is broader than subpoena authority because it is used to require answers to questions, in addition to the production of documents. It is equal in scope and an effective alternative to a subpoena with regard to production of documents.

QUESTION 4: The Department of Transportation's IG Office recently launched an investigation into NHTSA's actions related to the Toyota recalls. Please state the scope of this investigation and the timeframe in which the investigation is to take place. Please also state whether you believe this investigation could inform any legislative reform efforts.

RESPONSE 4: The DOT OIG announced its audit of NHTSA's Office of Defects Investigation on February 19, 2010. OIG identified three objectives:

- examine NHTSA's efforts to ensure that ODI has the appropriate information systems and processes in place to promptly identify and take action to address potential safety defects as intended by the TREAD Act;
- assess NHTSA's procedures and processes for ensuring that companies provide timely notification of potential safety defects; and
- examine the lessons learned from the Toyota recalls to identify any improvement needed in current policies and procedures.

In a February 24, 2010 letter from Senator John D. (Jay) Rockefeller IV, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation, and Senator Mark Pryor, Chairman of the U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Insurance, the OIG was requested to expand its audit to include:

- industry-wide complaints or reports collected by NHTSA regarding sudden unintended acceleration and brake failure in automobiles with electronic throttle and braking control systems;
- compliance with the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act reporting requirements; and
- government ethics at NHTSA.

OIG's audit is progressing and NHTSA is cooperating fully. We have not been informed of the timeframe for the investigation. Because we do not have the results of the investigation, we are not able to answer whether it would inform any legislative reform efforts.

QUESTION 5: Consumers Union submitted testimony recommending Congress mandate particular regulatory measures. Specifically, Consumers Union would like to see regulations on brake override, emergency engine shut-off, intuitive placement and better labeling of the neutral position, and gas pedal-to-floorboard distance standards. Ms. Claybrook has made similar calls for new safety standards updating the accelerator fail-safe standard, requiring electronic brake override, and requiring electronic magnetic interference protection.

- a. Please state whether NHTSA has looked into these issues or if there [are] any plans to look into these recommendations.
- b. Please state whether NHTSA believes there is safety merit to these suggestions, and, if so, whether you believe a Congressional mandate that NHTSA review these measures is necessary.
- c. Please provide any statistics NHTSA has on how many lives will be saved or injuries prevented by these safety measures.
- d. Please provide any per-vehicle cost estimates NHTSA has for these measures.
- e. Please describe where you believe these safety measures fall into a risk-based priority list.

RESPONSE 5: We are currently evaluating whether new regulatory actions are needed in these areas, including whether there is safety merit to these suggestions, and the priority that should be given to a rulemaking for each safety measure.

#### Brake Override and Accelerator Fail-Safe Standard

NHTSA has a standard, Federal Motor Vehicle Safety Standard (FMVSS) No. 124, that requires an engine's throttle to return to idle when the driver stops pressing on the accelerator pedal or when any one component of the accelerator control system is disconnected or severed at a single point. In recent years, NHTSA has been working to update the standard and address more directly newer electronic systems and different types of failures such as those that could be addressed by brake override technology. We are evaluating brake override technology to determine its safety benefits and to understand its performance characteristics, including how brake override systems differ among manufacturers using this technology. Currently, we do not have estimates for the number of fatalities or injuries that could be prevented by this technology. It is our understanding that manufacturers currently selling vehicles in the United States have the technological capacity to install electronic throttle control and therefore have the technological capacity to install brake override on their vehicles. Some manufacturers may lack sufficient lead time to change their manufacturing plans to install brake override for model year 2011.

#### Emergency Engine Shutoff

NHTSA has a standard, FMVSS No. 101 "Controls and Displays," which regulates the location, identification, color, and illumination of certain vehicle controls for both normal operation of a vehicle and in a panic situation. Currently, we do not have performance requirements specific to keyless ignition but they are subject to the requirements of FMVSS No. 114 Theft Protection and Rollaway Prevention. There is a lack of standardization of this feature among manufacturers, and we are evaluating whether the agency should consider taking steps to require standardization of this feature. We note that SAE International has been working to develop test procedures and guidelines for these controls, and they anticipate completion in June 2011. NHTSA is also monitoring this important work. Currently, we do not have estimates for the number of fatalities or injuries that could be prevented by the standardization of keyless ignitions. With regard to

costs, it is our understanding that manufacturers currently selling vehicles in the United States would have the technological capacity to standardize their controls but would need sufficient lead time to change their current strategies.

#### Pedal Distance Standards

We believe additional research in this area is needed. We are currently developing an evaluation plan to conduct new research in this area, including a review of SAE J1100 which contains recommendations for the placement of pedals. Currently, we do not have estimates for the number of fatalities or injuries that could be prevented by the standardization of pedal distances. With regard to costs, depending on the level of standardization, there could be significant redesign of the vehicle, including adjustments made for crash protection and the movement of mechanical components, and therefore significant costs.

#### Labeling and Placement of Neutral Positions

NHTSA has a standard, FMVSS No. 102 "Transmission shift position sequences, starter interlock, and transmission braking effect," which among other things regulates the position and identification of the neutral position. The standard allows manufacturers design flexibility with regard to the operation of automatic transmissions. We are developing a research plan to evaluate whether standardization of the operation for these controls is needed. Currently, we do not have estimates for the number of fatalities or injuries that could be prevented by better labeling and more stringent requirements for automatic transmissions. There could be significant redesign and thus associated costs given that affected vehicles would have to go through some amount of interior redesign.

#### Electronic Magnetic Interference (EMI) Protection

NHTSA is not aware of any proposed or demonstrated failure modes whereby EMI has caused vehicle malfunctions resulting in unintended acceleration. NHTSA has commissioned the National Academy of Sciences (NAS) to examine this and other issues. The NAS panel will make recommendations to NHTSA on how its rulemaking, research, and defects investigation activities may help ensure the safety of electronic control systems in motor vehicles. We will await the outcome of their study before making an evaluation on whether new standards are needed. Their work is scheduled to be completed in 2011.

**QUESTION 6:** Critics suggest NHTSA relies too much on manufacturers for information in order to do its job. Please state whether you agree with this assessment.

**RESPONSE 6:** We disagree with the assessment. Although NHTSA obtains a lot of information from manufacturers because they have warranty claim and complaint information as well as engineering data on the vehicles, NHTSA relies on a variety of sources for information. For example, NHTSA communicates with vehicle owners and operators, obtains information on peer vehicles made by other manufacturers, and conducts its own tests of vehicles, including the complaint and comparable vehicles, performs surveys, and uses available and relevant information from other sources.



QUESTION 7: Ms. Claybrook suggests in her written testimony that there is a breakdown in communication between your New Car Assessment section and the Safety Standards section in that information is not always transmitted or not taken seriously if transmitted. Please state whether you agree with this assessment.

RESPONSE 7: We disagree with Ms. Claybrook's assessment. New Car Assessment Program testing and safety standards sections are both in NHTSA's Office of Rulemaking and both sections work collaboratively on vehicle safety issues.

QUESTION 8: Critics argue that NHTSA isn't as effective as it could be because there are no clear criteria by which the agency determines investigation priorities. Please state whether you believe safety investigations can be advanced by a one-size-fits-all approach. If yes, please explain any efforts taken by NHTSA to identify these criteria.

RESPONSE 8: As noted above, NHTSA uses a set of risk-based procedures when deciding what issues to investigate and which investigations involve issues that should be the subject of a safety recall. (Please see response to question 1 for a more detailed discussion.) If a "one-size-fits-all" approach to determining investigations priorities means relying solely on the number of complaints, NHTSA does not believe that such an approach to safety investigations would serve the interests of safety. We believe that any approach needs to allow for assessments of risk. The informal risk analysis that NHTSA uses permits consideration of all relevant factors and, properly applied, is more likely to identify situations involving significant risk than a one-size-fits-all approach.

QUESTION 9: The agency's budget request is divided, providing \$117 million for Behavioral Safety and \$132.8 million for Vehicle Safety. Considering industry spends over \$80 billion a year on research and development but highway deaths are more likely to be related to driver behavior (for instance, there are approximately 16,000 alcohol-related deaths and an estimated 6,000 related to distracted driving), please state your opinion on whether the allocation is properly balanced to save the most lives.

RESPONSE 9: We believe that the tremendous strides that have been made over the years to reduce traffic injuries and deaths attributable to driver behavior. However, this does not diminish the need to continue to improve vehicle safety, including the agency's research efforts. NHTSA has the statutory responsibility to conduct research and work with the industry on vehicle safety issues, especially in the promulgation of rulemaking, testing of safety technologies, and ensuring compliance with these rules. All of these activities are supported by the \$132.8 million requested for vehicle safety efforts. Therefore, we believe that the allocation of funds strikes an appropriate balance to save the most lives.

We also note that the agency's budget request for \$117 million is not the only source of funds for driver behavioral issues. NHTSA also requested an additional \$620.7 million for grants to States to support driver behavioral programs at the State and local level.

QUESTION 10: Please describe the impact additional criminal penalties would have on the flow of information between manufacturers and NHTSA.

RESPONSE 10: We do not believe that additional criminal penalties would impact the flow of information.

QUESTION 10a: Please state your opinion on whether it [would] be reasonable to assume that every safety- or warranty-related communication would be filtered by criminal defense attorneys if criminal penalties are attached to reporting requirements and whether this could slow the flow of information to and communication with NHTSA.

RESPONSE 10a: We do not believe that it would be reasonable to assume that every warranty related opinion would be filtered. We have no opinion on safety related communications.

QUESTION 10b: Please state your opinion on the likelihood that NHTSA may require more attorneys than engineers if certain behavior becomes subject to criminal penalties.

RESPONSE 10b: We believe that this is unlikely.

QUESTION 11: Critics urge Congress to make public the information which NHTSA receives through the Early Warning Reporting. NHTSA has identified ☐ this information as confidential business information and been upheld upon challenge. Please state whether you support NHTSA's position.

RESPONSE 11: NHTSA's position was supported by a rulemaking record. This could be changed by a conclusive statutory determination.

QUESTION 12: The industry spends billions developing new safety technologies every year. Please state your opinion on the likelihood that increased penalties and additional criminal liability as proposed will have a chilling effect on R&D into new technologies or on the deployment of new technologies, thereby having a negative impact on safety. Please also state your opinion on whether it is likely some manufacturers may choose to stick with proven safety technologies rather than risk a glitch in the development or deployment of new technology.

RESPONSE 12: The development and implementation of new safety technologies continues to be an essential, active, and effective process for improving safety for drivers and passengers. There is a strong market and regulatory pull for these new developments as companies strive to market improved safety for their customers. These forces will likely continue.

In general, we believe that there are many factors that manufacturers weigh regarding the choice to "stick with proven safety technologies rather than risk a glitch in the development or deployment of new technology", and we are uncertain how manufacturers will make their decisions in response to increased penalties and criminal liability.

QUESTION 13: NHTSA has a long history under both Republican and Democratic administrations of extensively investigating the causes of sudden or unintended acceleration incidents. NHTSA released a report in March 1989 titled "An Examination of Sudden Acceleration" based on an independent review it commissioned to look into the 2,800 reports of sudden acceleration in Ford vehicles between 1989-1992. NHTSA revisited this issue in 1999-2000 in response to a petition alleging that NHTSA had failed to consider or address certain issues and requesting that it "institute a new investigation into the cause or causes of sudden acceleration." After review of current data and a review of the 1989-1992 Ford data, NHTSA denied the petition in April 2000. Please state whether there is any evidence thus far to suggest the procedure or findings of the agency at those times was insufficient or different from what the agency is now doing.

RESPONSE 13: NHTSA's report, "An Examination of Sudden Acceleration," was published in January 1989. This report was intended to take an independent review of the current state of understanding of the sudden acceleration phenomenon and was not related to the 2,800 reports of sudden acceleration in Ford vehicles. A panel of outside experts from the National Institute of Standards and Technology, Massachusetts Institute of Technology, Southwest Research Institute and Tufts University conducted the study. The 1989-1992 Ford study, commonly called the Updegrave study, was a different study.

When NHTSA revisited the issue of sudden acceleration in 2000 in response to a petition, NHTSA fully considered both the NHTSA report and the Ford study. We do not believe that the agency's procedure or findings at those times were insufficient or substantially different from what the agency is now doing. However, the increased use of electronic control systems in vehicles since the time of the 1989 NHTSA study certainly warrants a fresh look at unintended acceleration in the present context and issues that might need to be addressed involving vehicle electronics through research or rulemaking. The agency has initiated two major studies designed to answer the questions surrounding the issue of unintended vehicle acceleration, both with a focus on the possible role of electronic systems.

QUESTION 14: Please state whether NHTSA needs greater flexibility to contract on an "as-needed" basis for services it cannot perform internally. Please state the number of contractors NHTSA currently has under contract and how many contracts for service it used in 2009.

RESPONSE 14: We believe that we have adequate flexibility to contract for services that we cannot perform internally. As of April 30, 2010, NHTSA has 232 active contracts. In FY 2009, NHTSA had 275 active contracts.

QUESTION 15: Please provide historical data per year since NHTSA was established detailing:

QUESTION 15a: The number of NHTSA FTEs directly related to defect investigation (i.e., not administrative staff).

RESPONSE 15a: Attached is a table listing the number of onboard employees directly involved in investigations by year since 1990. Please note that NHTSA has historical data on staff from 1990 to 2010.

QUESTION 15b: The number of defect investigations initiated.

RESPONSE 15b: Attached is a table listing investigation by type and by year since 1967 through present. In the early years, only "Cases" were conducted. They later gave way to Engineering Analyses (EA) and Information Requests (IR) which were the predecessor to the Preliminary Evaluation. The IR's were conducted for four years in the early 1980s. Currently our first level investigation is the Preliminary Evaluation (PE). Recall Queries (RQ) are conducted when a follow-up examination of an existing recall is warranted. Blank cells indicate that no investigations of that particular type were performed that year.

QUESTION 15c: The number of voluntary recalls issued.

RESPONSE 15c: Please see attachment.

**Question from Congressman Terry**

QUESTION: Will your agency officially support Congressional efforts to remove the driving restrictions from 23 United States Code §164, and permit each State to use ignition interlocks to stop drunk drivers in ways that make sense to State legislators?

RESPONSE: The National Highway Traffic Safety Administration would not be opposed to Congressional action to remove the statutorily-imposed location restrictions for repeat DUI offenders driving with an ignition interlock device during the limited reinstatement period.

## Response 15b: Number of Defects Investigations Initiated

	Case*	Engineering Analysis	Information Request	Preliminary Evaluation	Recall Query
Calendar Year					
1967	9				
1968	53				
1969	90				
1970	55				
1979	80				
1972	14	62			
1973	8	72			
1974	8	110			
1975	2	43			
1976	4	31			
1977	3	84			
1978	1	182			
1979	1	173			
1980		156			
1981		34	16		
1982		55	37		
1983		30	97		
1984		42	74		
1985	2	47		66	
1986	1	33		78	
1987	61	24		62	
1988	1	24		109	
1989	1	44		171	1
1990	1	45		123	16
1991		61		157	3
1992	1	46		90	0
1993		33		102	4
1994	1	43		95	3
1995		33		62	7
1996		31		75	2
1997		28		51	13
1998		25		65	25
1999		34		79	22
2000		28		49	19
2001		19		44	2
2002		37		97	2
2003		25		66	10
2004		37		84	12
2005		22		67	4
2006		21		58	9
2007		19		63	4
2008		26		75	7
2009		18		59	4
2010†		4		10	3
<b>Totals</b>	397	1,881	224	2,057	172

\* Case designation/classification was eliminated in the mid-1990s.

† The EA, PE and RQ numbers are as of April 16, 2010.

# All Recalls by Year

Year	All						Defect						Compliance					
	All			Influenced			All			Influenced			All			Influenced		
	Recalls	Affected	Voluntary	Recalls	Affected	Voluntary	Recalls	Affected	Voluntary	Recalls	Affected	Voluntary	Recalls	Affected	Voluntary	Recalls	Affected	Voluntary
1966	58	982,823	58	982,823	0	0	58	982,823	58	982,823	0	0	0	0	0	0	0	0
1967	143	3,745,009	138	1,664,539	5	2,080,470	143	3,745,009	138	1,664,539	5	2,080,470	0	0	0	0	0	0
1968	137	1,507,881	134	1,058,497	3	449,384	137	1,507,881	134	1,058,497	3	449,384	0	0	0	0	0	0
1969	187	7,974,566	170	7,677,797	17	296,769	179	7,889,544	166	7,664,283	13	225,261	8	85,022	4	13,514	4	71,508
1970	162	1,340,258	147	1,041,234	15	299,024	154	1,212,223	144	1,029,660	10	182,563	8	128,035	3	11,574	5	116,461
1971	253	9,650,686	199	1,557,487	54	8,093,199	213	9,115,630	188	1,413,299	25	7,702,331	40	535,056	11	144,188	29	390,868
1972	331	12,275,042	230	3,904,487	101	8,370,555	310	11,993,673	226	3,814,391	84	8,179,282	21	281,369	4	90,096	17	191,273
1973	278	8,365,736	245	3,306,671	33	5,059,065	254	8,297,784	238	3,286,232	16	5,011,552	24	67,952	7	20,439	17	47,513
1974	292	4,601,943	239	2,976,119	53	1,625,724	280	4,488,146	224	2,912,454	36	1,575,694	32	113,695	15	63,665	17	50,030
1975	263	2,297,175	242	1,933,713	21	363,462	224	1,953,785	210	1,823,895	5	129,895	39	343,365	24	109,818	15	233,567
1976	262	4,275,595	215	2,713,807	47	1,561,789	169	3,568,023	164	2,141,885	5	1,426,338	93	707,543	51	572,122	42	135,421
1977	309	11,544,627	239	4,501,716	70	7,042,911	198	10,573,093	171	3,941,909	27	6,631,184	111	971,534	68	559,807	43	411,727
1978	331	24,396,804	235	4,142,402	96	20,254,402	259	23,083,393	186	3,907,129	73	19,176,264	72	1,313,411	49	235,273	23	1,078,138
1979	341	10,378,200	285	4,808,608	56	5,569,592	243	9,965,363	214	4,575,411	29	5,389,952	98	412,837	71	233,197	27	179,640
1980	220	12,675,797	174	2,031,402	46	10,644,395	147	11,949,056	123	1,732,387	24	10,168,668	73	726,741	51	249,015	22	477,726
1981	197	31,000,131	165	7,769,730	32	23,230,401	146	30,868,304	128	7,662,364	18	23,205,940	51	131,827	37	107,386	14	24,461
1982	174	2,924,012	144	1,729,696	30	1,194,316	141	2,647,158	124	1,709,323	17	937,835	33	276,854	20	20,373	13	256,481
1983	182	7,173,745	144	1,987,876	38	5,185,869	132	5,381,598	109	1,610,074	23	3,762,524	50	1,792,147	35	368,802	15	1,423,345
1984	209	7,552,553	174	2,905,219	35	4,647,334	150	6,086,182	135	2,316,939	21	4,369,243	53	866,371	39	588,280	14	278,091
1985	227	10,682,248	173	2,387,328	54	8,301,941	166	6,399,052	132	2,299,171	34	4,089,881	61	4,239,197	41	88,037	20	4,211,160
1986	219	4,383,134	184	2,831,337	35	1,551,797	158	3,480,631	139	2,367,880	19	1,112,771	61	902,503	45	463,477	16	439,026
1987	252	10,221,660	195	3,163,844	57	7,057,816	199	9,208,108	160	2,878,419	39	6,329,689	53	1,013,552	35	285,425	18	728,127
1988	242	12,022,644	198	10,083,599	44	1,939,045	201	11,240,073	172	9,875,986	29	1,364,087	41	782,571	26	207,613	15	574,958
1989	281	11,427,325	211	4,204,634	70	7,222,691	211	8,119,998	166	2,435,339	45	5,684,659	70	3,307,327	45	1,769,295	25	1,538,032
1990	289	10,535,563	183	6,289,115	86	12,246,448	184	12,015,711	154	5,872,286	30	6,143,425	85	6,519,852	29	416,829	56	5,103,023
1991	282	14,401,194	178	3,209,183	104	11,192,011	199	12,004,345	140	2,948,747	59	9,155,598	63	2,396,846	38	360,436	45	2,036,413
1992	217	13,554,727	147	4,541,527	70	9,013,200	178	11,453,278	123	4,034,716	55	7,418,562	39	2,101,449	24	506,811	15	1,594,638
1993	264	11,017,438	177	1,710,662	87	9,306,776	219	9,816,809	150	1,307,330	69	8,509,479	45	1,200,629	27	403,332	18	797,297
1994	290	9,911,975	225	3,396,811	65	6,515,164	229	9,075,789	189	2,946,007	40	6,129,782	61	836,186	36	450,804	25	385,382
1995	348	19,027,724	250	7,008,108	98	12,019,616	279	15,899,098	189	3,330,333	90	11,968,745	69	3,128,626	61	3,077,755	8	50,871
1996	341	19,505,204	237	5,853,090	104	13,642,114	290	17,100,960	197	4,155,333	93	12,945,627	51	2,404,244	40	1,707,757	11	896,487
1997	312	16,744,265	247	4,328,828	65	12,415,437	273	14,943,643	215	3,952,654	58	10,990,969	39	1,800,622	32	376,174	7	1,424,448
1998	408	19,185,682	315	7,142,374	93	12,043,308	343	17,448,789	261	5,571,752	82	11,877,037	65	1,736,893	54	1,570,622	11	166,271
1999	440	55,560,456	333	40,570,828	107	14,989,630	349	52,635,122	270	39,168,437	79	13,466,685	91	2,925,336	63	1,402,391	28	1,522,949
2000	628	44,615,540	505	13,387,877	121	31,227,663	501	39,708,133	418	10,227,094	83	29,481,039	125	4,907,407	87	3,130,783	38	1,776,624
2001	527	22,391,967	437	12,139,797	90	10,252,170	436	20,112,189	374	10,620,343	62	9,591,846	91	2,279,778	63	1,619,454	28	660,324
2002	504	21,252,005	413	10,268,376	91	10,983,629	450	20,320,873	372	9,498,631	78	10,822,042	54	931,132	41	769,545	13	161,587
2003	600	22,780,659	445	11,917,174	155	10,863,485	478	18,172,637	349	7,947,214	129	10,213,588	122	4,608,022	96	3,969,960	26	638,062
2004	688	33,006,036	533	13,827,864	155	19,181,172	564	30,383,887	438	11,513,748	126	18,720,078	134	2,625,149	95	2,314,116	39	311,033
2005	645	20,396,519	465	6,263,599	180	12,132,920	528	19,077,638	393	7,341,090	135	11,735,548	117	1,318,891	72	942,509	45	376,372
2006	613	14,056,632	477	7,157,377	136	6,899,255	465	10,801,420	415	5,179,470	79	5,521,941	118	3,255,212	61	1,977,698	57	1,277,314
2007	712	20,622,012	575	9,895,423	137	10,726,589	584	19,457,386	484	9,959,012	100	10,098,374	128	1,164,626	91	536,411	37	628,215
2008	781	22,531,937	494	12,848,015	287	9,683,922	588	19,019,193	397	11,838,640	191	7,180,553	193	3,512,744	97	1,009,375	96	2,503,369
2009	570	17,843,586	397	9,164,747	173	8,678,839	427	17,036,453	339	8,534,129	88	8,502,324	143	807,133	58	630,618	85	176,515
Total	14,997	650,349,589	11,571	274,285,220	3,426	376,064,369	12,082	580,829,890	9,725	240,910,264	2,327	339,757,710	2,945	69,519,699	1,846	33,374,956	1,099	36,144,743

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Updated as of 1/11/2010

Vehicle Recall Summary by Year

Year	All						Defect						Compliance					
	All			Influenced			All			Influenced			All			Influenced		
	Recalls	Affected	0	Recalls	Affected	0	Recalls	Affected	0	Recalls	Affected	0	Recalls	Affected	0	Recalls	Affected	0
1966	58	982,823	58	982,823	0	0	58	982,823	58	982,823	0	0	0	0	0	0	0	0
1967	143	3,745,009	138	1,664,539	5	2,080,470	143	3,745,009	138	1,664,539	5	2,080,470	0	0	0	0	0	0
1968	137	1,507,881	134	1,058,497	3	449,384	137	1,507,881	134	1,058,497	3	449,384	0	0	0	0	0	0
1969	183	7,920,199	168	7,665,327	15	254,272	179	7,889,544	156	7,664,283	13	225,261	4	3,0655	2	1644	2	29,011
1970	154	1,233,726	141	977,849	13	255,877	149	1,158,424	139	975,961	10	182,463	5	75302	2	1988	3	73,314
1971	235	9,420,062	182	1,394,807	53	8,025,255	206	9,095,466	181	1,393,135	25	77,02331	29	324,596	1	1672	28	322,924
1972	320	12,085,670	224	3,773,873	96	8,311,997	306	11,951,490	222	3,772,208	84	8,179,282	14	134,380	2	1665	12	132,715
1973	251	7,034,231	225	3,193,287	26	3,840,964	239	7,028,460	225	3,193,267	14	383,5193	12	5771	0	0	12	5,771
1974	247	2,882,083	198	2,675,613	49	206,470	231	2,832,667	198	2,675,613	33	157,074	16	49,996	0	0	16	49,996
1975	215	2,106,671	196	1,743,599	19	363,072	193	1,856,489	187	1,726,594	6	129,895	22	25,0192	9	17,005	13	233,177
1976	209	3,497,097	171	2,005,717	38	1,491,380	144	2,951,294	141	1,557,968	3	136,326	65	545,803	30	447,749	35	98,054
1977	245	10,724,355	192	3,847,363	53	6,876,992	171	10,293,714	147	3,751,213	24	65,42501	74	430,641	45	96,150	29	334,491
1978	271	8,656,376	192	3,668,022	79	5,188,354	216	8,037,889	154	3,489,016	62	453,9870	55	816,490	38	17,0006	17	648,484
1979	275	8,919,036	224	4,394,596	51	4,525,341	205	8,545,653	179	4,185,950	26	435,9703	70	374,383	45	208,746	25	165,338
1980	167	4,868,132	131	1,726,369	36	3,141,763	121	4,546,780	101	1,532,747	20	301,4033	46	321,352	30	193,622	16	127,730
1981	157	30,410,012	129	7,184,731	28	23,225,281	123	30,313,961	106	7,107,446	17	232,05915	34	96,651	23	77,285	11	19,366
1982	135	1,914,077	115	1,257,495	20	656,582	113	1,708,988	100	1,245,364	13	463,324	22	205,389	15	12,131	7	193,258
1983	140	6,115,321	109	1,818,609	31	4,296,716	109	5,273,651	90	1,516,818	19	37,58633	31	84,1670	19	301,787	12	539,883
1984	164	7,220,340	142	2,716,866	22	4,503,392	137	6,561,053	119	2,196,948	18	436,4052	27	69,9298	23	51,9998	4	150,340
1985	173	5,629,349	138	1,814,009	35	3,815,340	147	5,553,027	116	1,761,522	31	37,91505	26	7,8322	22	52,487	4	23,935
1986	173	2,879,494	148	1,823,331	25	1,056,163	135	2,621,078	120	1,737,821	16	88,3257	37	258,416	28	85,510	9	172,906
1987	197	9,090,547	159	2,852,784	38	6,237,763	176	8,673,797	139	2,636,802	37	62,36995	21	216,750	20	215,982	1	768
1988	197	4,486,479	164	3,414,677	33	1,071,802	165	4,168,509	142	3,209,546	23	95,9953	32	319,790	22	205,131	10	112,639
1989	234	7,131,680	175	1,708,360	59	5,423,320	181	6,881,486	140	1,516,090	41	5,965,967	53	25,0214	35	192,261	18	57,953
1990	208	5,986,063	144	1,608,690	64	4,376,373	142	4,250,553	120	1,340,857	22	29,90986	66	17,35510	24	26,8833	42	1,466,577
1991	221	8,280,649	150	2,854,042	71	5,426,607	162	7,872,425	120	2,541,166	42	533,1259	59	40,8224	30	31,2676	29	95,348
1992	185	10,346,671	123	3,117,600	62	7,229,071	155	9,267,626	104	2,627,448	51	66,40178	30	107,9045	19	49,0152	11	588,893
1993	222	10,018,950	144	1,597,912	78	8,421,038	185	9,615,593	121	1,221,009	64	83,94894	37	40,3357	23	37,6903	14	26,454
1994	247	6,202,883	198	2,981,744	49	3,221,139	204	5,705,705	171	2,680,005	33	30,16709	43	49,6178	27	291,739	16	204,438
1995	265	18,121,565	206	6,249,241	59	11,872,324	208	15,279,562	152	3,412,495	56	118,67067	57	284,2003	54	28,36746	3	5,267
1996	304	17,826,392	213	4,973,442	91	12,852,950	260	16,157,219	177	3,339,206	83	128,18013	44	16,69173	36	16,34236	8	34,937
1997	265	14,712,658	212	3,940,781	53	10,771,877	237	14,519,589	169	3,731,717	49	107,46418	28	19,3066	24	16,7610	4	25,459
1998	365	17,140,876	280	6,034,643	85	11,112,235	304	15,335,371	228	4,572,947	76	11,027,726	61	161,1507	52	15,06696	9	104,511
1999	395	19,376,291	298	7,727,007	97	11,649,284	312	16,056,436	240	6,348,471	72	10,157,965	83	286,98955	68	13,78530	25	1,491,319
2000	541	24,636,743	443	12,109,060	98	12,527,683	432	20,012,869	327	8,979,992	75	11,033,777	109	452,3874	86	312,9968	23	1,493,506
2001	453	13,626,263	376	10,087,582	77	3,536,681	379	11,845,190	322	8,833,936	57	30,11354	74	17,81073	54	12,53746	20	527,327
2002	434	18,435,565	347	8,428,779	87	10,006,786	385	17,564,282	310	7,715,561	75	96,48721	49	87,1283	37	71,3218	12	158,065
2003	527	19,652,786	399	10,109,445	129	8,556,343	429	15,185,652	311	6,703,234	119	90,15318	98	374,4236	87	340,3211	11	341,025
2004	600	30,805,580	459	11,776,617	141	19,029,963	493	28,358,694	375	9,516,758	118	1,884,184	107	244,7981	84	225,9659	23	188,122
2005	562	18,960,383	406	7,142,230	155	11,818,153	472	18,170,464	346	6,637,314	126	11,533,150	90	7,89919	60	50,4916	30	285,003
2006	490	11,203,534	395	5,048,886	95	6,154,648	415	8,741,175	341	3,199,985	74	55,41190	75	246,2359	54	184,8901	21	613,458
2007	587	14,822,296	465	5,730,221	102	8,092,078	502	14,153,234	408	5,512,516	94	86,40718	85	66,9065	77	217,705	8	451,390
2008	684	10,535,188	414	3,864,250	270	6,574,938	527	8,697,715	336	3,219,454	189	53,80051	157	193,9473	75	744,796	81	1,194,077
2009	492	16,406,694	340	8,327,002	152	8,079,692	370	15,720,004	290	7,734,710	80	7,965,294	122	6,866,900	50	592,292	72	94,398
Total	12,727	467,180,795	9,884	189,170,982	2,643	278,009,813	10,558	427,573,290	8,461	162,434,965	2,097	265,136,325	2,169	38,607,505	1,423	26,736,077	746	12,871,488

Equipment Recall Summary by Year

Year	All						Defect						Compliance					
	All			Voluntary			Influenced			All			Voluntary			Influenced		
	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected
1970	1	0	1	0	0	0	0	0	2	2,126	2	2,126	0	0	0	0	0	0
1971	3	3,673	3	3,673	0	0	0	0	2	16,480	2	16,480	0	0	1	1,547	0	0
1972	2	16,480	2	16,480	0	0	0	0	6	36,697	5	36,697	1	200	0	0	0	0
1973	6	36,697	5	36,697	1	200	0	0	14	604,016	12	185,396	2	418,620	0	0	0	0
1974	14	604,016	12	185,396	2	418,620	14	604,016	12	185,396	2	418,620	0	0	0	0	0	0
1975	25	146,124	24	145,742	1	382	19	76,174	19	76,174	0	0	6	69,950	5	69,958	1	382
1976	25	320,595	21	280,447	4	40,138	21	307,459	20	280,447	1	27,012	4	13,126	1	0	3	13,126
1977	29	350,898	17	195,972	12	154,929	18	259,355	15	170,672	3	88,683	11	91,543	2	25,300	9	66,243
1978	29	854,053	14	291,023	15	563,030	24	427,417	14	291,023	10	136,394	5	426,636	0	0	5	426,636
1979	24	1,223,033	20	192,741	4	1,030,292	21	1,222,121	18	191,672	3	1,030,249	3	912	2	869	1	43
1980	28	730,670	20	248,038	8	482,632	19	375,877	17	243,241	2	132,636	9	354,793	3	4,797	6	349,996
1981	15	262,663	13	262,658	2	205	13	256,483	12	256,458	1	25	2	6,380	1	6,200	1	180
1982	21	813,504	14	399,401	7	414,103	15	750,281	14	399,401	1	350,880	6	63,223	0	0	6	63,223
1983	20	958,970	15	74,842	5	884,128	18	80,508	15	74,842	3	5,668	2	878,462	0	0	2	878,462
1984	27	240,052	15	105,110	12	134,942	18	110,301	15	105,110	3	5,191	9	129,751	0	0	9	129,751
1985	33	4,726,086	15	536,199	18	4,189,887	17	538,761	15	536,199	2	2,562	16	4,187,325	0	0	16	4,187,325
1986	28	900,025	22	843,873	6	56,152	16	667,470	14	616,396	2	51,074	12	232,555	8	227,477	4	5,078
1987	36	793,138	19	263,577	17	529,561	16	211,993	15	211,789	1	204	20	581,145	4	51,788	16	529,357
1988	30	6,661,347	23	6,215,075	7	446,272	26	6,216,086	23	6,215,075	3	1,011	4	445,261	0	0	4	445,261
1989	29	396,288	24	383,474	5	12,814	23	360,267	21	351,089	2	9,178	6	36,021	3	32,385	3	3,636
1990	34	2,047,713	21	519,826	13	1,527,887	24	563,363	20	519,676	4	43,687	10	1,484,350	1	150	9	1,484,200
1991	35	4,078,569	14	127,509	21	3,951,060	27	3,138,381	12	121,322	15	3,017,059	8	940,198	2	8,187	6	934,001
1992	17	562,311	14	506,060	3	56,251	15	540,121	13	494,121	2	46,000	2	22,190	1	11,936	1	10,251
1993	32	143,704	28	106,805	4	36,895	29	118,505	25	81,610	4	36,855	3	25,199	3	25,199	0	0
1994	31	3,125,411	20	309,560	11	2,815,851	20	2,981,252	15	177,332	5	2,803,920	11	144,159	5	132,228	6	11,931
1995	75	524,849	38	418,409	37	106,440	69	517,520	35	415,842	34	101,678	6	7,329	3	2,567	3	4,762
1996	30	852,747	17	63,583	13	789,164	27	191,197	17	63,583	10	127,614	3	661,550	0	0	3	661,550
1997	34	388,134	25	177,987	9	210,147	33	387,978	25	177,987	8	209,991	1	156	0	0	1	156
1998	35	513,239	29	424,072	6	89,167	33	461,759	28	392,446	5	69,313	2	51,480	1	31,626	1	19,854
1999	33	33,851,801	26	32,830,936	7	1,020,865	29	33,796,543	25	32,807,304	4	989,236	4	55,298	1	23,632	3	31,626
2000	73	1,182,952	55	1,071,308	18	111,644	61	1,118,570	55	1,071,308	6	47,262	12	64,382	0	0	12	64,382
2001	56	1,028,192	47	894,272	9	133,920	45	586,621	42	563,039	3	23,582	11	441,571	5	331,233	6	110,338
2002	51	1,104,284	49	1,049,893	2	54,391	51	1,104,284	49	1,049,893	2	54,391	0	0	0	0	0	0
2003	60	1,373,197	40	1,097,098	20	276,099	43	630,758	34	532,159	9	98,599	17	742,439	6	564,939	11	177,500
2004	78	1,273,691	55	1,124,108	23	149,583	58	1,102,432	50	1,074,134	8	28,298	20	171,259	5	49,974	15	121,285
2005	71	1,086,242	48	804,914	23	281,328	49	648,026	41	456,067	8	191,959	22	440,216	7	349,847	15	91,369
2006	96	2,133,644	58	1,456,313	40	677,331	59	1,468,717	55	1,455,242	4	13,475	37	664,927	1	1,071	36	663,856
2007	107	1,760,366	78	1,530,170	29	230,196	72	1,552,969	71	1,497,969	1	55,000	35	207,307	7	32,201	28	175,166
2008	66	2,630,738	50	1,321,754	16	1,308,984	48	1,311,542	47	1,311,250	1	252	18	1,319,196	3	10,504	15	1,308,692
2009	64	737,965	47	646,864	17	91,101	48	624,030	43	614,991	5	9,039	16	113,935	4	31,873	12	82,062
Total	1,503	80,440,451	1,056	57,161,863	447	23,276,588	1,149	65,364,640	971	55,137,762	178	10,226,876	354	15,075,811	85	2,024,101	269	13,051,710



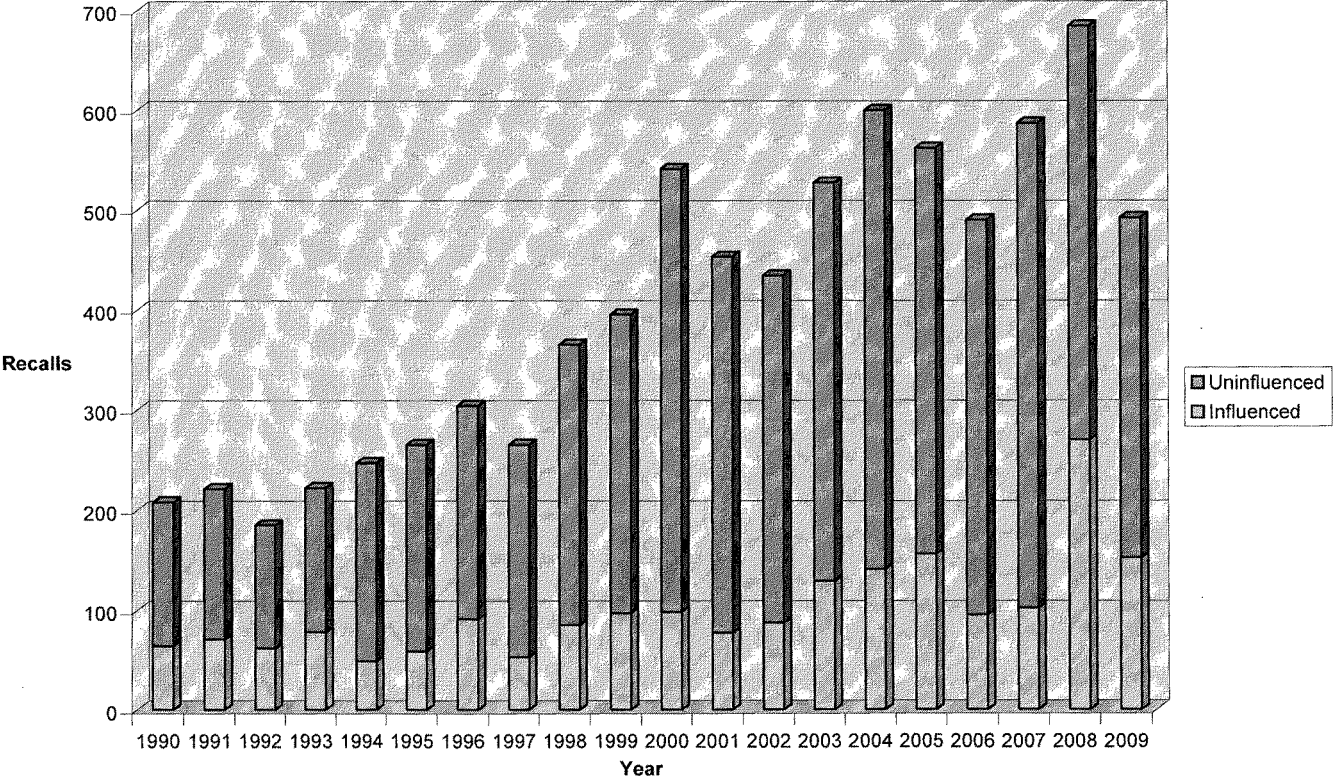
Child Safety Seat Recall Summary by Year

Year	All						Defect						Compliance					
	All		Voluntary		Influenced		All		Voluntary		Influenced		All		Voluntary		Influenced	
	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected
1972	5	58,558	0	0	5	58,558	0	0	0	0	0	0	5	58,558	0	0	5	58,558
1973	2	1,178,259	0	0	2	1,178,259	1	1,176,159	0	0	1	1,176,159	1	2,100	0	0	1	2,100
1974	1	41,200	1	41,200	0	0	0	0	0	0	0	0	1	41,200	1	41,200	0	0
1980	1	7,000	1	7,000	0	0	0	0	0	0	0	0	1	7,000	1	7,000	0	0
1981	1	204,180	1	204,180	0	0	1	204,180	1	204,180	0	0	0	0	0	0	0	0
1982	2	102,831	0	0	2	102,831	2	102,831	0	0	2	102,831	0	0	0	0	0	0
1983	1	5,000	0	0	1	5,000	0	0	0	0	0	0	1	5,000	0	0	1	5,000
1984	2	11,123	1	2,123	1	9,000	0	0	0	0	0	0	2	11,123	1	2,123	1	9,000
1985	2	304,599	1	8,785	1	295,814	1	295,814	0	0	1	295,814	1	8,785	1	8,785	0	0
1986	4	439,482	0	0	4	439,482	1	178,440	0	0	1	178,440	3	261,042	0	0	3	261,042
1987	3	294,859	1	4,367	2	290,492	1	92,490	0	0	1	92,490	2	202,369	1	4,367	1	198,002
1988	3	659,843	1	252,985	2	406,858	2	642,985	1	252,985	1	390,000	1	16,858	0	0	1	16,858
1989	7	3,783,784	3	2,074,609	4	1,709,175	2	766,870	1	533,870	1	233,000	5	3,016,914	2	1,540,739	3	1,476,175
1990	14	10,330,003	5	3,987,815	9	6,342,188	8	7,057,857	4	3,867,815	4	3,190,042	6	3,272,146	1	120,000	5	3,152,146
1991	14	1,889,786	2	75,442	12	1,814,344	3	856,022	1	48,742	2	807,280	11	1,033,784	1	28,700	10	1,007,084
1992	8	2,637,778	3	909,900	5	1,727,878	5	1,642,284	3	909,900	2	732,384	3	995,494	0	0	3	995,494
1993	5	848,843	0	0	5	848,843	1	78,000	0	0	1	78,000	4	770,843	0	0	4	770,843
1994	7	490,591	2	12,417	5	478,174	3	310,559	1	1,397	2	309,162	4	180,032	1	11,020	3	169,012
1995	5	371,783	3	330,931	2	40,852	1	100,000	1	100,000	0	0	4	271,783	2	230,931	2	40,852
1996	5	824,823	5	824,823	0	0	0	752,000	2	752,000	0	0	3	72,823	3	72,823	0	0
1997	8	1,636,327	5	202,914	3	1,433,413	1	34,580	0	0	1	34,580	7	1,601,747	5	202,914	2	1,398,833
1998	4	928,406	2	86,500	2	841,906	2	854,500	1	54,500	1	800,000	2	73,906	1	32,000	1	41,906
1999	5	2,325,907	2	6,426	3	2,319,481	4	2,325,907	1	6,326	3	2,319,481	1	100	1	100	0	0
2000	6	4,383,295	2	164,959	4	4,218,336	2	4,164,144	1	164,144	1	4,000,000	4	219,151	1	815	3	218,336
2001	8	3,933,456	5	153,887	3	3,779,569	3	3,891,747	2	134,837	1	3,756,910	5	41,709	3	19,050	2	22,659
2002	6	1,032,530	4	110,078	2	922,452	3	973,696	2	54,766	1	918,930	3	58,834	2	55,312	1	3,522
2003	10	2,343,929	4	712,886	6	1,631,043	4	2,223,232	2	711,726	2	1,511,506	6	120,697	2	1,180	4	119,537
2004	3	357,475	2	355,849	1	1,626	2	355,849	2	355,849	0	0	1	1,626	0	0	1	1,626
2005	4	213,056	3	201,616	1	11,439	2	200,991	1	189,552	1	11,439	2	12,064	2	12,064	0	0
2006	5	129,825	4	62,549	1	67,276	1	67,276	0	0	1	67,276	4	62,549	4	62,549	0	0
2007	11	3,664,521	7	2,353,612	4	1,310,909	7	3,384,512	3	2,073,603	4	1,310,909	4	280,009	4	280,009	0	0
2008	10	1,296,036	10	1,296,036	0	0	7	1,130,982	7	1,130,982	0	0	3	165,054	3	165,054	0	0
2009	8	530,355	4	22,308	4	508,046	5	526,246	2	18,255	3	507,991	3	4,109	2	4,054	1	55
Total	180	47,259,442	84	14,466,198	96	32,793,244	77	34,390,053	39	11,565,429	38	22,824,624	103	12,869,389	45	2,900,769	58	9,968,620

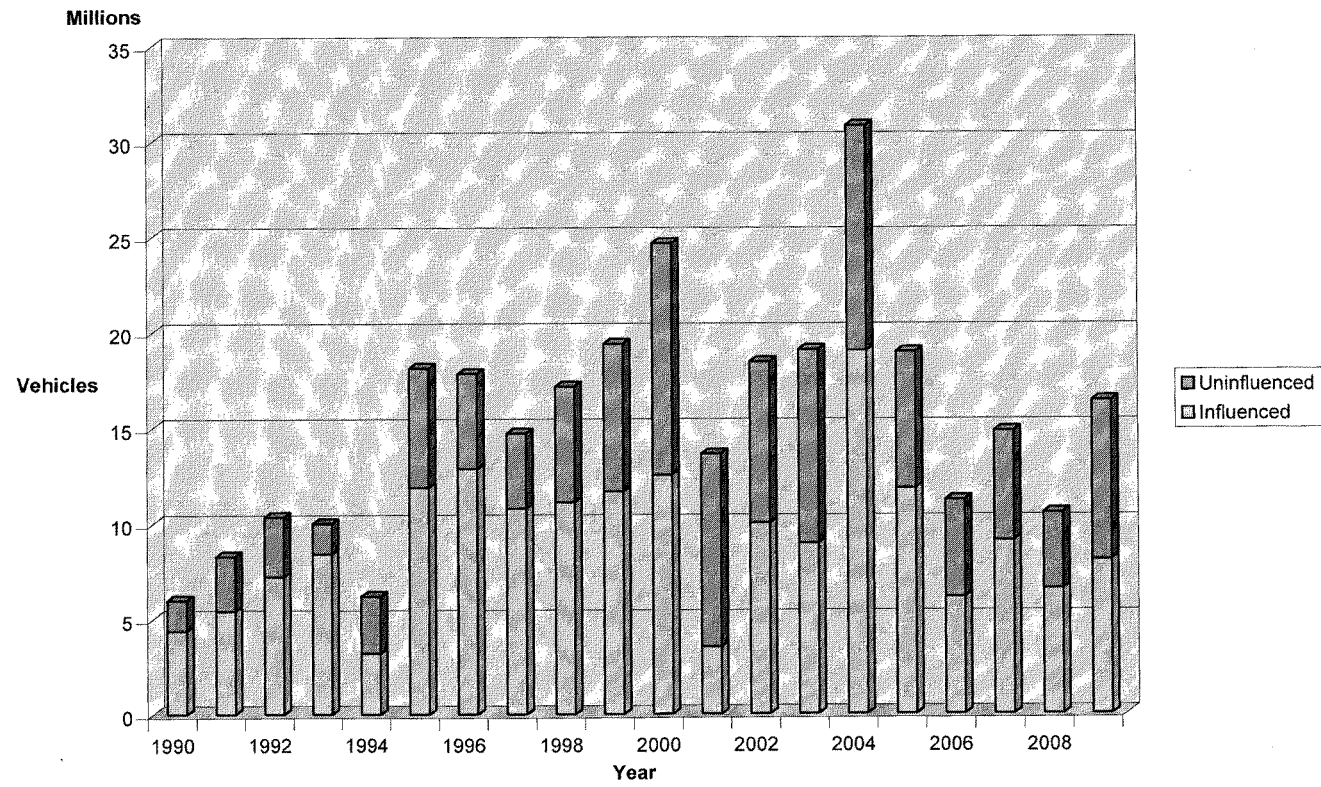
Tire Recall Summary by Year

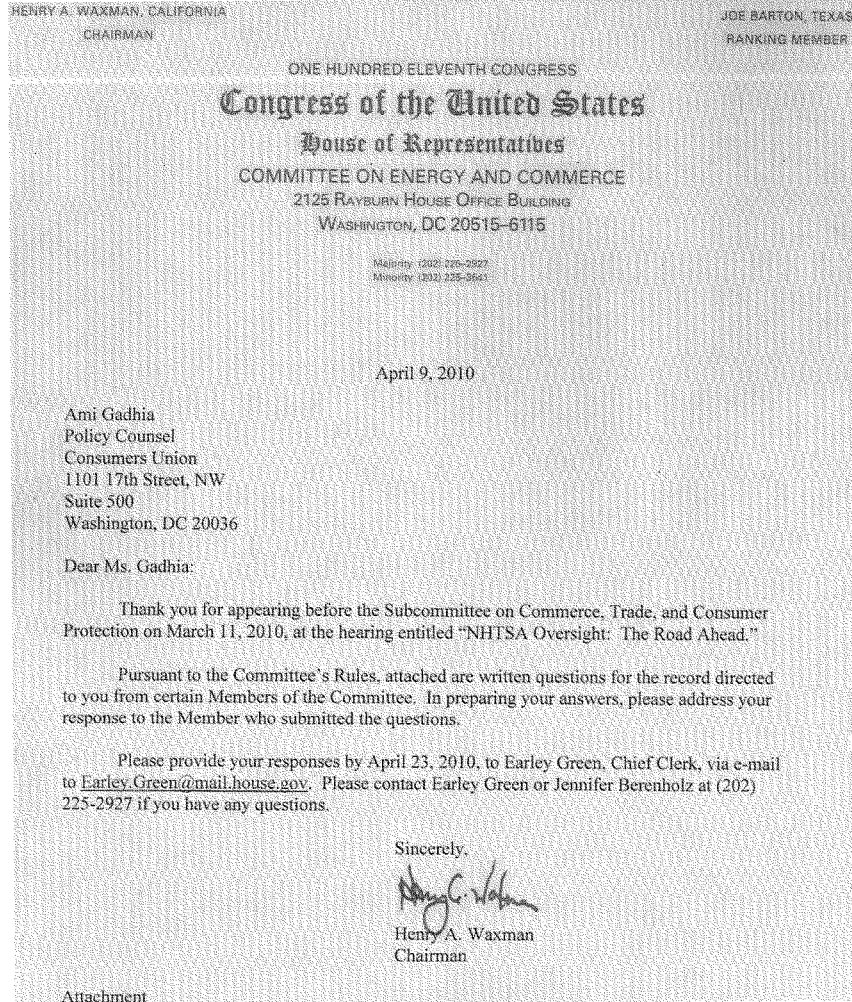
Year	All						Defect						Compliance					
	All		Voluntary		Influenced		All		Voluntary		Influenced		All		Voluntary		Influenced	
	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected	Recalls	Affected
1969	4	54,367	2	11,870	2	42,497	0	0	0	0	0	0	4	54,367	2	11,870	2	42,497
1970	7	106,532	5	63,385	2	43,147	4	53,799	4	53,799	0	0	3	52,733	1	9,586	2	43,147
1971	15	226,951	14	159,007	1	67,944	5	18,038	5	18,038	0	0	10	208,913	9	140,969	1	67,944
1972	4	114,134	4	114,134	0	0	2	25,703	2	25,703	0	0	2	88,431	2	88,431	0	0
1973	19	116,349	15	76,707	4	39,642	8	56,268	8	56,268	0	0	11	60,081	7	20,439	4	39,642
1974	30	1,074,544	28	73,910	2	1,000,634	15	1,051,445	14	51,445	1	1,000,000	15	23,099	14	22,465	1	634
1975	23	44,380	22	44,372	1	8	12	21,127	12	21,127	0	0	11	23,253	10	23,245	1	8
1976	28	457,884	23	427,643	5	30,241	4	309,270	3	303,270	1	6,000	24	148,614	20	124,373	4	24,241
1977	35	469,374	30	458,381	5	10,993	9	20,024	9	20,024	0	0	26	449,350	21	438,357	5	10,993
1978	31	14,886,375	29	183,357	2	14,503,018	19	14,618,090	18	118,090	1	14,500,000	12	68,285	11	65,267	1	3,018
1979	42	235,231	41	221,272	1	13,959	17	197,689	17	197,689	0	0	25	37,542	24	23,583	1	13,959
1980	24	7,069,995	22	49,995	2	7,020,000	7	7,028,399	5	6,399	2	7,020,000	17	43,596	17	43,596	0	0
1981	24	123,076	22	118,161	2	4,915	9	94,280	9	94,280	0	0	15	28,796	13	23,881	2	4,915
1982	16	93,600	15	72,800	1	20,800	11	85,358	10	64,558	1	20,800	5	8,242	5	8,242	0	0
1983	21	94,454	20	94,429	1	25	5	27,439	4	27,414	1	25	16	67,015	16	67,015	0	0
1984	16	81,030	16	81,030	0	0	1	14,831	1	14,831	0	0	15	66,199	15	66,199	0	0
1985	19	28,215	19	28,215	0	0	1	1,450	1	1,450	0	0	18	26,765	18	26,765	0	0
1986	14	164,133	14	164,133	0	0	5	13,643	5	13,643	0	0	9	150,490	9	150,490	0	0
1987	16	43,116	16	43,116	0	0	6	29,828	6	29,828	0	0	10	13,288	10	13,288	0	0
1988	12	214,975	10	200,862	2	14,113	8	212,493	6	198,380	2	14,113	4	2,482	4	2,482	0	0
1989	11	115,573	9	38,191	2	77,382	5	111,395	4	34,281	1	77,114	6	4,178	5	3,910	1	268
1990	13	171,784	13	171,784	0	0	10	143,938	10	143,938	0	0	3	27,846	3	27,846	0	0
1991	12	152,190	12	152,190	0	0	7	137,517	7	137,517	0	0	5	14,673	5	14,673	0	0
1992	7	7,967	7	7,967	0	0	3	3,247	3	3,247	0	0	4	4,720	4	4,720	0	0
1993	5	5,941	5	5,941	0	0	4	4,711	4	4,711	0	0	1	1,230	1	1,230	0	0
1994	5	93,090	5	93,090	0	0	2	77,273	2	77,273	0	0	3	15,817	3	15,817	0	0
1995	3	9,527	3	9,527	0	0	1	2,016	1	2,016	0	0	2	7,511	2	7,511	0	0
1996	2	1,242	2	1,242	0	0	1	544	1	544	0	0	1	698	1	698	0	0
1997	5	7,146	5	7,146	0	0	2	1,496	2	1,496	0	0	3	5,650	3	5,650	0	0
1998	4	597,159	4	597,159	0	0	4	597,159	4	597,159	0	0	0	0	0	0	0	0
1999	7	6,459	7	6,459	0	0	4	6,336	4	6,336	0	0	3	123	3	123	0	0
2000	6	14,412,550	5	12,550	1	14,400,000	6	14,412,550	5	12,550	1	14,400,000	0	0	0	0	0	0
2001	10	3,804,056	9	1,004,056	1	2,800,000	9	3,788,631	8	988,631	1	2,800,000	1	15,425	1	15,425	0	0
2002	13	679,626	13	679,626	0	0	11	678,611	11	678,611	0	0	2	1,015	2	1,015	0	0
2003	3	745	3	745	0	0	2	95	2	95	0	0	1	650	1	650	0	0
2004	17	571,290	17	571,290	0	0	11	567,007	11	567,007	0	0	6	4,283	6	4,283	0	0
2005	8	134,839	8	134,839	0	0	5	58,157	5	58,157	0	0	3	76,692	3	76,692	0	0
2006	22	589,629	22	589,629	0	0	20	524,252	20	524,252	0	0	2	65,377	2	65,377	0	0
2007	7	374,626	5	281,420	2	93,406	3	368,671	2	274,924	1	91,747	4	8,155	3	6,496	1	1,658
2008	21	8,065,975	20	6,265,975	1	1,800,000	6	7,976,954	5	6,176,954	1	1,800,000	15	89,021	15	89,021	0	0
2009	6	168,572	6	168,572	0	0	4	166,173	4	166,173	0	0	2	2,399	2	2,399	0	0
Total	587	55,468,501	547	13,486,177	40	41,982,724	268	53,501,907	254	11,772,108	14	41,729,799	319	1,966,994	293	1,714,069	26	252,925

Vehicle Recalls



### Vehicles Recalled





**Consumers Union (CU) responses to written questions for the record, "NHTSA Oversight: The Road Ahead" hearing, March 11, 2010.**

**The Honorable John D. Dingell**

*I. Sufficiency of Existing NHTSA Authorities and Resources*

- 1) Are the reporting provisions of the TREAD Act being effectively implemented by NHTSA and automobile manufacturers? Please explain your response and submit supporting materials for the record.**

The changes implemented by the TREAD Act – among others, a requirement that auto manufacturers report to NHTSA information about safety recalls or defects; the creation of an Early Warning Reporting system (EWR); and the attachment of increased civil and criminal penalties to violations of the law – were all improvements to NHTSA's authorities. We are not able to comment specifically on how well the TREAD Act provisions are being followed by all auto manufacturers. However, we are concerned about the adequacy of compliance because of the Toyota case involving sudden unintended acceleration (SUA). Specifically, NHTSA stated that Toyota failed to report known safety problems to the agency as required by the TREAD Act. We believe that NHTSA needs additional resources to be able to hire enough staff to fully monitor compliance, and to enforce violations of TREAD Act requirements.

- 2) Did the TREAD reporting system accomplish what was necessary to protect the public safety in the recent Toyota recall cases? If not, please provide for the record where and how the system failed, both at NHTSA and Toyota.**

The TREAD Act states that auto manufacturers are legally obligated to notify NHTSA within five business days if they determine that a safety defect exists. In this case, based on NHTSA's investigation and the recent fine levied by the agency against Toyota, it is clear that Toyota failed to adhere to the legal requirements of the TREAD Act. We believe that lax enforcement by NHTSA in the past may have contributed to an atmosphere of non-compliance.

- 3) Is there any critical data or source of data needed by NHTSA that is not currently provided to it under the TREAD Act or other reporting requirements for automobile manufacturers? If so, please describe this data and what is required for NHTSA to obtain it.**

Under the TREAD Act, manufacturers are required to report select information to NHTSA. That information is given to NHTSA via the Early Warning Reporting (EWR) system. But only the tallies for fatalities, injuries and property damage and production numbers are currently made public under the EWR system; consumer complaints to the manufacturer are currently kept confidential<sup>1</sup>. We believe consumer complaint numbers submitted by manufacturers to NHTSA under the EWR system should also be made public by NHTSA and should be easily searchable by consumers.

With regards to other information that would be a critical source of data for NHTSA, we also believe that manufacturers should make information from black box recording devices more

<sup>1</sup> See: <http://www-odi.nhtsa.dot.gov/ewr/qb/documents/NHTSA-ODI-EWR-Facts.pdf>

immediately accessible to government investigators. Most new passenger vehicles are equipped with Event Data Recorders (EDRs) that record such data as vehicle speed, throttle position, air-bag deployment, brake application, and safety belt usage. These data can help police and accident investigators reconstruct what happened in a crash. But it can be difficult for carmakers and investigators to easily access this information. Toyota, for instance, has only limited proprietary data retrieval tools for their black boxes. Other companies use formats that can be easily read by commercial tools.

In 2006, NHTSA promulgated a final rule on EDRs; the standards put forth in this final rule must be implemented in EDRs that are installed in the 2013 model-year cars. As part of this rule, NHTSA requires auto manufacturers and their licensees to ensure that EDR data retrieval tools are commercially available. Congress may want to consider ways to ensure that retrieval tools for existing EDRs – not just the 2013 model-year cars captured by the NHTSA rule – are also commercially available. We have encouraged all automakers to quickly adopt formats to enable swift information retrieval and dissemination to crash investigators. We would also like to see the incorporation of EDRs in all vehicles.

**4) Do you believe NHTSA made mistakes in its response to the recent Toyota recalls? Likewise, should NHTSA have pushed Toyota to initiate recalls earlier than it did?**

We believe that NHTSA should have opened the same type of investigations that it has now opened into the Toyota SUA problem, and more aggressively pursued information and responses from Toyota (e.g., by going to Japan to speak to Toyota officials there) earlier. We are pleased that the agency is now in the midst of a thorough investigation of this issue, and we look forward to their findings.

We also believe that Toyota and NHTSA (by default for agreeing to the recall) erred in the 2007 recall regarding floor mats. In that recall, Toyota only re-profiled the regular and all weather mats so that they gave more space around the throttle pedal. The manufacturer missed a simple fact: that consumers will double stack the mats (by putting the all weather mat on top of the regular floor mat) and thus create the potential for throttle pedal entrapment. This 2007 recall should have also required Toyota to re-profile the throttle pedal to allow clearance for this reasonable use by the consumer. NHTSA, by agreeing to the less expensive recall, was complicit in this issue. A recall should not be left up to the consumer to perform.

**5) What authorities does NHTSA lack, whether under the TREAD Act or otherwise, with which to address defects in automobiles deemed hazardous to the public safety?**

NHTSA has the authority to seek civil penalties from automakers and suppliers for a variety of violations. If agency officials determine that a company violated such statutory obligations, the company can be fined up – but only up to a maximum of \$16.4 million in civil penalties. This amount might be considered by a large, multi-billion dollar manufacturer as just the “cost of doing business.” We believe that NHTSA should have greater authority to levy civil penalties that can serve as a real deterrent against further wrongdoing. Therefore, we recommend removal of the cap on civil penalties.

- 6) **There seems to be broad agreement about the need to increase the resources available to NHTSA to carry out its mission. Could you suggest by how much NHTSA's budget should be increased, as well as the rationale for this amount?**

It is critical that the safety functions that support NHTSA's mission to save lives and prevent injuries are adequately funded. In 2007, motor-vehicle crashes accounted for 99 percent of all transportation-related fatalities and injuries. Yet NHTSA's budget currently amounts to just over 1 percent of the overall Department of Transportation (DOT) budget. Congress should ensure that the agency's budget and staffing for auto-safety and consumer-protection functions is commensurate with the realities of traffic safety and can keep up with the agency's other priorities. We think the President's budget request for NHTSA for FY2011 of \$878 million is a good start.

## *II. Penalties*

- 1) **Are the civil penalties NHTSA is allowed under statute to assess sufficient for the agency to deter non-compliance by automobile manufacturers? Please explain your answer.**

We do not believe that there should be a cap of the civil penalties that NHTSA can levy on manufacturers for violating the law. NHTSA recently levied a fine of \$16.4 million against Toyota for failing to notify NHTSA of a dangerous pedal defect for almost four months. The agency could not levy higher civil penalties against Toyota, even if it felt that to be appropriate, because of the cap. As stated above, we are concerned that this amount might be considered by a large, multi-billion dollar manufacturer as just the "cost of doing business." We therefore recommend that the cap on civil penalties be lifted.

- 2) **Are there additional criminal penalties that the Congress should consider allowing NHTSA to impose on automobile manufacturers? If there are, please name and discuss them.**

Congress should consider revising NHTSA's statutory authorities to include the ability to levy criminal penalties for knowing and willful violations of NHTSA rules and regulations.

- 3) **Are you concerned that the threat of criminal penalties will chill communications between manufacturers and NHTSA? Please explain your response.**

We do not believe that criminal penalties will chill communications between manufacturers and NHTSA. NHTSA is required to meet certain legal requirements in making the case for application of criminal penalties; these legal proof requirements are adequate to ensure that auto manufacturers will not be criminally fined if they are following with the law.

## *III. Domestic vs. Foreign Automobile Manufacturers*

- 1) **My questioning of James Lentz, Toyota's chief of sales for North America, revealed that decisions to recall Toyota's vehicles sold in North America are made in Japan. I am concerned that this is a threat to public safety in this country. Do you agree?**

We agree with you.



- 2) **How should this be corrected? For example, should foreign automobile manufacturers that sell vehicles in the United States be required to empower their personnel here to initiate recalls?**

Yes. We think that all auto manufacturers should have a system in place that ensures their full and timely compliance with all safety-related issues and NHTSA requests.

#### IV. *Conflict of Interest Rules*

- 1) **Are NHTSA's current conflict-of-interest rules sufficient to protect the agency from undue influence from former staff? Please explain your answer.**

We are concerned about reports that former NHTSA employees have gone to work for the companies that they once regulated and that this may have impacted safety decisions.<sup>2</sup> We urge Congress to examine this issue and the loopholes in current government ethics rules, and to consider additional ways to stop the “revolving door” at NHTSA and other federal agencies.

- 2) **If you believe this is not the case, should new conflict of interest rules be codified in statute, or should that be left to the NHTSA to set for itself?**

We urge Congress to examine this issue and the loopholes in current government ethics rules, and to consider additional ways to stop the “revolving door” at NHTSA and other federal agencies.

We also bring to your attention an *LA Times* news article, which details Transportation Secretary LaHood's response to questioning on this topic by the Senate Commerce Committee. According to this news article, “[Secretary] LaHood said [NHTSA] complied with legal prohibitions on contacting the agency on issues they [former NHTSA employees now working in industry] had worked on at the agency, but said he would welcome a rule preventing NHTSA employees from going to work for automakers until at least two years after leaving the agency.”<sup>3</sup> We think that the Secretary's proposal makes sense.

<sup>2</sup> See “Analysis Finds Uneasy Mix in Auto Industry and Regulation,” *Washington Post*, Mar. 9, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/08/AR2010030804900.html?hpid=topnews>

<sup>3</sup> See “Calls Grow for Throttle Safeguard,” *Los Angeles Times*, Mar. 3, 2010, <http://www.latimes.com/business/la-fi-toyota-hearing3-2010mar03.0.4259968.story>.

The Honorable Joe Barton

- 1) **You testified that NHTSA became aware of unintended acceleration complaints as early as 2003 but that it took 7 years for the issue to be more fully addressed. As discussed at the hearing, there has been extensive awareness, attention, and action on the part of NHTSA dating back to the late 1980's. Given that your testimony acknowledges some of these types of problems can be hard to reproduce and diagnose, and that the results of NHTSA's multiple investigations did not produce evidence sufficient to support a recall, please explain what different course of action you believe NHTSA should have taken.**

We believe that NHTSA should have noticed that there were enough complaints in the past to warrant a more thorough investigation of the SUA problem. We also believe that NHTSA should have opened the same type of investigations that it has now opened into the Toyota SUA problem, and more aggressively pursued information and responses from Toyota (e.g., by going to Japan to speak to Toyota officials there) earlier. For example, according to an investigation by House Energy & Commerce Committee Majority, "[s]ince 2000, NHTSA has received 2,600 complaints of sudden unintended acceleration, as well as six defect petitions requesting investigations. Despite these warnings, NHTSA conducted only one cursory investigation in 2004 into the possibility that defects in electronic controls could be responsible for these incidents."<sup>4</sup>

- 2) **You acknowledge that we have the best automotive safety net in the world, that the recent unintended acceleration problems can be hard to catch or diagnose, and that your organization's safety tests failed to reveal any acceleration issues in Toyotas in part because the episodes are so rare. Please provide any recommendations you believe Congress should consider that will help accurately diagnose the problem earlier.**

We have a few recommendations for items that we believe Congress should consider to help NHTSA accurately diagnose and address safety problems such as SUA earlier. First, CU believes NHTSA is in need of additional funding and staff. We believe that additional resources will help the agency to hire appropriate staff and to pursue investigations more thoroughly, as they are required to do pursuant to their auto safety mission.

Second, Congress should consider improvements to make the NHTSA database easier to use for NHTSA, as well as for consumers and independent third parties such as CU. NHTSA's Office of Defects Investigation (ODI) collects complaints and data about autos from the public and manufacturers in two separate databases: the consumer complaints database and the agency's Early Warning Reporting (EWR) system. But both have limitations and the data they provide are not integrated, making it more difficult for investigators to spot issues and consumers and third parties to find information.

Public access to this information should be dramatically improved. Consumers shouldn't have to visit different site sections to see all of this information, or be forced to search it using tools that are less than user-friendly. All complaint information should be visible via a single consumer-facing

<sup>4</sup> See letter from Chairmen Waxman and Stupak to Secretary Ray LaHood, Feb. 22, 2010, at [http://energycommerce.house.gov/Press\\_111/20100222/lahood\\_letter\\_2010\\_2\\_22.pdf](http://energycommerce.house.gov/Press_111/20100222/lahood_letter_2010_2_22.pdf).

site. And this service must include intuitive tools that allow users to easily find information for particular models and compare vehicle safety records.

Improvements to these databases would also help Consumers Union to help NHTSA. If we were able to more fully mine the database, CU and other independent groups like ours could do more to support NHTSA by flagging any spikes we see in problems with specific vehicles. Such information would be useful for car owners and buyers, as well as the agency and automakers.

- 3) Safety features are become [sic] more complex and more technological every year. The more technology is involved, the more expensive something is. If safety features are mandated, don't we risk a continuation of making cars too expensive to afford, thus prolonging purchase decisions and keeping older cars on the road that don't have safety features?**

When safety features are incorporated in all vehicles, the costs of such features are reduced. For example, when electronic stability control (ESC) first started as an optional extra in early vehicles, it cost approximately \$1,000. However, when it was incorporated into more vehicles, the cost of this option steadily fell to \$600, and then to less than \$200.

Consumers place a tremendous amount of trust in their vehicles, and expect that the underlying product is safe enough to transport themselves and their families every day. CU believes that vehicle safety protections should be available to all consumers – whether they purchase high-end or low-end vehicles, or foreign or domestic vehicles – and that mandates are often necessary to ensure that all car manufacturers are providing the same protection. Finally, by mandating safety features, we prevent manufacturers who do not offer the protections from having a price advantage over another company that does include the safety feature.

- 4) The NHTSA budget sends 70% - over \$600 million each year – to States. Please explain whether you believe the allocation between the states and NHTSA should be reexamined.**

CU believes that both the state-based and the federal safety activities of NHTSA are vital. However, it is critical that the safety functions that support NHTSA's mission to save lives and prevent injuries are adequately funded. In 2007, motor-vehicle crashes accounted for 99 percent of all transportation-related fatalities and injuries. Yet NHTSA's budget currently amounts to just over 1 percent of the overall Department of Transportation (DOT) budget. Congress should ensure that the agency's budget and staffing for auto-safety and consumer-protection functions is commensurate with the realities of traffic safety and can keep up with the agency's other priorities.

- 5) **Please specify the additional information you believe event data recorders should capture. Please also describe how consumers' privacy can be protected once that information is turned over to NHTSA and then made public as suggested by some safety advocates.**

In our comments to NHTSA regarding its proposed rule on event data recorders (EDRs), we submitted the following list of minimal data that we felt should be gathered by EDRs:

- Longitudinal and lateral acceleration and principal direction of forces
- Seat belt status by seating location
- Number of occupants and location within/without the vehicle
- Pre-crash data, such as steering wheel angle, brake use, vehicle speed
- Time of crash
- Rollover sensor data
- Yaw data
- ABS, traction control, and stability control data
- Air bag operation data
- Tire pressure data
- VIN (alpha-numeric portion, not 6-digit serial number)

In addition to the points above submitted in our comments, we think that EDRs should also gather engine revolutions per minute (rpm), gear selector position and gear at the time of the crash.

In its final rule on EDRs, NHTSA stated that it is requiring seat belt status for front passengers only, whereas CU recommended both front and rear passengers be included.

Regarding privacy concerns, in its final rule, NHTSA stated that it will obtain the consent of the vehicle owner to gain access to EDR data, that it will hold all personally identifiable information as confidential, and that it will not make public any information which has the potential to either directly or indirectly identify individuals (except as specifically required by law). The rule also stated that for any information that is released publicly, NHTSA will remove the last 6 digits of the VIN, which are the personal identifiers of a vehicle and its owner. We believe that these privacy protections, as included in the final rule, are adequate.

Further detail about our privacy concerns regarding EDR information are detailed in our 2004 comments to NHTSA in response to its EDRs rulemaking; these comments are available at: <http://www.consumersunion.org/pub/1130%20EDR%20NHTSA%20comments.pdf>.



*Dave McCurdy*  
President and CEO

April 23, 2010

The Honorable Henry Waxman  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Waxman:

In response to your letter of April 9, 2010, the Alliance appreciates the opportunity to provide you and others in the Congress with the industry's perspective on manufacturing, selling and servicing the safest motor vehicle fleet in the world.

In your letter, you provided questions for responses, and specific answers are attached. Thank you for the opportunity to summarize how auto safety is a top priority to automakers.

Sincerely,

A handwritten signature in cursive script that reads "Dave McCurdy".

The Honorable Dave McCurdy

cc: The Honorable Joe Barton, Ranking Member  
The Honorable John Dingell, Chairman Emeritus

BMW Group • Chrysler Group LLC • Ford Motor Company • General Motors Company • Jaguar Land Rover  
Mazda • Mercedes-Benz, USA • Mitsubishi Motors • Porsche • Toyota • Volkswagen

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The Honorable John D. Dingell Questions:**1. Sufficiency of Existing NHTSA Authorities and Resources****1. Are the reporting provisions of the TREAD Act being effectively implemented by NHTSA and the automobile manufacturers? Please explain your response and submit supporting materials for the record.**

The TREAD Act (the act) requires reporting of extensive data to NHTSA. NHTSA promulgated 49 CFR Part 579, which implemented the provisions of Section 3 of the act requiring the submission of information about "Defects in Foreign Countries" and "Early Warning Reporting" information. Part 579 has effectively created a framework for the submission of the required information and has resulted in the creation of a large data warehouse by NHTSA, with assistance from the Volpe Transportation Center, to receive and store the resulting information. This data warehouse is known as "ARTEMIS". Early Warning Reports are required to be submitted quarterly, with production information and aggregate data due sixty days after the end of the calendar quarter and portable document format (pdf) copies of non-dealer field reports due seventy-five days after the end of the calendar quarter. All but the smallest manufacturers are required to submit the information electronically using a file transfer protocol. Both NHTSA and manufacturers have invested significant resources in the development of the organizational and IT infrastructure needed to meet the aggressive timing in Part 579. The current system allows NHTSA to effectively collect the required data, and does achieve the stated goal of making the information available to NHTSA sooner.

Recently NHTSA conducted a two-year review of TREAD reporting and made adjustments to Part 579 to increase the effectiveness of the reporting and to reduce certain information being collected from certain smaller manufacturers. During this review NHTSA also considered making revisions to the reporting templates, but ultimately decided that such changes were not justified at this time. The Alliance concurs with NHTSA's decision not to revise the templates because the resources required to make such changes cannot be shown to provide an added safety benefit.

Further, the Alliance recommends that consideration be given to providing resources for improving NHTSA's website, to make the current search engines and consumer interfaces more effective and user friendly. For example, the current website requires a consumer to do separate searches on NHTSA's VOQ data and to manually analyze the publicly available TREAD death and injury data from each manufacturer on a quarter by quarter basis to review what data may be applicable to their vehicle. A more advanced website design might allow a single search by make, model and model year for both kinds of data. Further, NHTSA's VOQ system for collecting consumer complaints directly from consumers does not make use of manufacturer's production data submitted under Part 579 to create menu-driven valid make-model- model year combinations to identify the consumer's vehicle, rather than an open text field. The Alliance recommends that these and other improvements to NHTSA's consumer interfaces on their website be considered.

**2. Did the TREAD reporting system accomplish what was necessary to protect the public safety in the recent Toyota recall cases? If not, please provide for the record where and how the system failed, both NHTSA and Toyota.**

NHTSA has collected consumer complaints directly from consumers for several decades through its Vehicle Owner Questionnaire (VOQ). VOQs have historically been a rich source of information for NHTSA and have been the basis for the opening of a significant portion of their investigations. The TREAD reporting system implemented under Section 3(b) of the TREAD Act and Part 579 of the

implementing regulations has provided additional information to supplement the VOQ data. In particular, the pdf copies of non-dealer field reports submitted under Part 579, provide a technically rich set of early warning information that, together with VOQs, allows NHTSA to identify and initially evaluate potential issues, and determine whether to open an investigation. The Alliance believes that these two sources provide NHTSA with adequate information to identify potential issues. The fact that NHTSA opened multiple investigations into acceleration-related reports demonstrates that the agency had sufficient data available to it on this topic.

**3. Is there any critical data or source of data needed by NHTSA that is not currently provided to it under the TREAD Act or other reporting requirements for automobile manufacturers? If so, please describe this data and what is required for NHTSA to obtain it.**

The Alliance believes that NHTSA, manufacturers and safety researchers would benefit from having improved real-world crash data. NHTSA is in a unique position to collect such data through its NASS and FARS systems, and the recent introduction of several advanced safety technologies such as side airbags, advanced frontal restraints, electronic stability control, and improved roof strength help drive a need for increased data on the performance of these new systems in real world crashes. Please see the answer to Congressman Barton's first question for additional details.

**4. Do you believe NHTSA made mistakes in its response to the recent Toyota recalls? Likewise, should NHTSA have pushed Toyota to initiate recalls earlier than it did?**

The Alliance is not privy to all of the data available to Toyota or NHTSA, nor to any of the discussions that may have occurred between them, and therefore, is unable to comment as to whether any mistakes were made. Federal law requires all auto manufacturers to notify NHTSA within five working days of determining that a safety defect exists and promptly conduct a recall. See 49 CFR Part 573, "Defect and Non-Compliance Responsibility and Reports." Federal law further requires manufacturers to submit to NHTSA a description of the manufacturer's program for remedying the defect or non-compliance. The agency has the authority to order a vehicle manufacturer to expand the sources of replacement parts or the number of authorized repair facilities beyond those usually and customarily used to accelerate the completion of the remedy program.

Manufacturers must also submit to the agency quarterly progress reports to allow the agency to track a manufacturer's progress in completing its recall program. If NHTSA believes that progress is insufficient, it may order a manufacturer to issue additional notifications to affected vehicle owners in an attempt to increase the completion rate.

Finally, as established by the TREAD Act, federal law specifies requirements for manufacturers to reimburse owners and purchasers for costs incurred for remedies completed in advance of the manufacturer's remedy program. Details of a manufacturer's reimbursement plan must be provided to NHTSA.

**5. What authorities does NHTSA lack, whether under the TREAD Act or otherwise, with which to address defects in automobiles deemed hazardous to the public safety?**

Alliance members sell vehicles in markets throughout the world, and we recognize the NHTSA has having a very aggressive and thorough investigative authority. The Alliance believes that NHTSA's current authorizing legislation gives it broad and adequate powers to collect information, conduct investigations and address defects in automobiles that may present an unreasonable risk to motor

vehicle safety. NHTSA's principal legal authority comes from the National Traffic and Motor Vehicle Safety Act of 1966, as amended. The Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act), among other things, amended the Safety Act. The Safety Act is codified in Chapter 301 of Title 49 of the United States Code. Additional authority for NHTSA resides in Chapters 321, 323 (Consumer information), 325 (bumper standards), 327 (odometers), and 329 (automobile fuel economy) and Title 23 U.S.C. sections 401-411 (grants and highway safety programs). Implementing regulations are codified at Chapter V of Title 49 of the Code of Federal Regulations.

Sections §30118 – 30121, §30163, and §30165 – 30166 of 49 U.S.C. Chapter 301, Motor Vehicle Safety, provide specific authority (granted to the Secretary of Transportation, carried out by NHTSA) relating to enforcement activities associated with safety defects in motor vehicles (and motor vehicle equipment) and failures to comply with applicable Federal Motor Vehicle Safety Standards (FMVSS). Please see Appendix A to these comments. The corresponding implementing regulations are codified at Parts 573 through 579 of Title 49 of the Code of Federal Regulations.

NHTSA also has various resources available to it to aid in the detection of potential defects. NHTSA's Enforcement Division investigates defects and non-compliances. A brief overview of this activity is given below.

The Office of Defects Investigation (ODI) investigates possible defect trends, and where appropriate, seeks recalls of vehicles and vehicle equipment that pose an unreasonable risk to motor vehicle safety. ODI analyzes the various data received or developed to determine whether anomalies or trends exist that potentially indicate the presence of a defect trend and an unreasonable risk to motor vehicle safety:

As required by the TREAD Act, NHTSA developed and maintains a comprehensive and sophisticated data warehouse/system (ARTEMIS) to access the voluminous amount of early warning reporting (EWR) data submitted quarterly by manufacturers. Please see Appendix B for more information about the EWR requirements.

The agency annually receives approximately 30,000 complaints from vehicle owners, and pursues multitudes of evaluations and investigations based on this information.

The agency's Office of Vehicle Safety Compliance (OVSC) is responsible for the development of objective and repeatable compliance test procedures for new and amended Federal Motor Vehicle Safety Standards (FMVSS) that the agency uses to evaluate conformance to the regulations. It also conducts the agency's vehicle compliance test program that annually conducts an average of 230 vehicle tests and over 800 tests on motor vehicle equipment.

In addition to the compliance test program, testing performed by the agency's New Car Assessment Program (NCAP) also provides an indication of compliance with related FMVSS requirements and can help identify the existence of potential safety-related concerns. Historically, NHTSA conducts more than 150 NCAP vehicle crash tests per year that covers over 85 percent of the new car fleet.



**6. There seems to be broad agreement about the need to increase the resources available to NHTSA to carry out its mission. Could you suggest by how much NHTSA's budget should be increased, as well as the rationale for this amount?**

NHTSA needs to have the necessary resources (authority, funding, staffing) to fulfill its mission. The annual budgeting process provides Congress the opportunity to regularly review whether sufficient resources exist and whether those resources are being used to maximum advantage.

Congress has consistently funded NHTSA above authorization levels. NHTSA has about 635 employees and an annual budget of \$870 million, 70 percent of which goes to states and local governments in the form of highway traffic safety grants. The near-term priority plan recently published by the agency<sup>1</sup> and the longer-term plan now under development by the agency<sup>2</sup> are useful tools to NHTSA, the industry it regulates, and other safety partners. These documents are also useful tools by which the Committee may exercise oversight of the agency, as they can also be used to gauge the extent of resources needed to accomplish these plans.

In FY2010, NHTSA has an enforcement budget of \$18,077,000. Specifically, Vehicle Safety Compliance is funded at \$8,096,000; Safety Defect Investigations is funded at \$9,829,000. These amounts go to support DOT Safety goals by ensuring compliance with motor vehicle safety standards, evaluating safety-related concerns in motor vehicles and motor vehicle equipment, enforcing the Federal odometer law, encouraging enforcement of State odometer laws, and by ensuring that manufacturers conduct recalls in a timely manner.

The Alliance believes that another critical need is to fund the National Automobile Sampling System (NASS) at a level sufficient to attain its intended design size to ensure critical "real-world" data is collected at a sufficient number of sites nationwide to provide the statistically valid, nationally representative sample originally intended. The budget for NASS has not kept pace with either the Department's informational needs or inflation. Moreover, these needs are growing as automakers reinvent the automobile in response to societal demands for ever safer and cleaner vehicles. Starved for funds, the capability of NASS has been dramatically reduced. Currently, NASS collects in-depth data on approximately 4,500 crashes – less than a third of the intended design size of 15,000 to 20,000 crash cases annually. A \$40 million dollar annual investment in NASS equates to 1.73 cents for every \$100 of economic loss.

## **II. Penalties**

**1. Are the civil penalties NHTSA is allowed under statute to assess sufficient for the agency to deter non-compliance by automobile manufacturers?**

Yes. When Congress passed the TREAD Act in 2000, it increased civil penalties available to the agency to \$5,000 per vehicle per offense with a cap indexed to inflation. The cap currently stands at \$16.4 million per offense. By comparison, in 2008, Congress capped civil penalties for other manufacturers of consumer products at \$15 million per offense.

To be clear, penalties are not the primary motivation for Alliance members to meet and exceed government safety requirements, and to fully comply with all aspects of the Safety Act. Alliance

<sup>1</sup> See 74 Fed. Reg. 57623, November 9, 2009.

<sup>2</sup> See 74 Fed. Reg. 57385, November 5, 2009.

members are first and foremost motivated by the safety of our customers and our reputations for building safe and reliable transportation.

**2. Are there additional criminal penalties that the Congress should consider allowing NHTSA to impose on automobile manufacturers?**

No. Auto manufacturers already face criminal sanctions under 18 USC 1001 for making false statements to NHTSA concerning defects or non-compliances. The statute, which applies to early warning reporting requirements, provides that anyone who knowingly and willfully conceals a material fact or makes any false statement or representation to a Federal agency, on a matter within its jurisdiction, is guilty of a felony. Additionally, 18 USC 371 provides felony sanctions for conspiring to defraud a Federal agency. Additional criminal sanctions, aimed exclusively at auto manufacturers, could have the perverse effect of delaying the speedy identification and remedy of defects related to safety as explained below.

**3. Are you concerned that the threat of criminal penalties will chill communications between manufacturers and NHTSA?**

Yes. When Congress passed the TREAD Act, it recognized that the best way to protect the public is to identify and remedy vehicle defects as soon as possible. In the ten years since TREAD passed, the number of recalls has increased, but the overall number of vehicles recalled has actually decreased. That is because auto manufacturers and NHTSA are identifying potential problems sooner and engaging in a process that is driven primarily by engineers on both sides, not attorneys.

Criminal penalties could chill communications with NHTSA and complicate and delay resolution of disputes to the detriment of the driving public. The dialog that exists today between engineers at NHTSA and manufacturers might be replaced by guarded, formal communications vetted by lawyers on both sides. To the extent that there are disputes between NHTSA and manufacturers regarding the existence of a defect or non-compliance, the vast majority of these are resolved relatively quickly without a formal determination by NHTSA. Polarizing this process by adding criminal penalties could result in more disputes being ultimately resolved through litigation rather than the administrative process established by Congress. Such litigation would be exhaustive, expensive, and lengthy, with the government having the highly difficult task of proving, beyond a reasonable doubt, individual guilt for a knowing and willful violation.

**III. Domestic vs. Foreign Automobile Manufacturers**

**1. My questioning of James Lentz, Toyota's chief of sales for North America, revealed that decisions to recall Toyota vehicles sold in North America are made in Japan. I am concerned this is a threat to public safety in this country. Do you agree?**

No, we believe this was a specific communication problem at one parent company that has since been addressed. Secretary LaHood and Administrator Strickland testified at the hearings that the communications problem with the parent company in the recent instance was unique and steps have been taken to ensure that similar problems do not arise in the future.

**2. How should this be corrected? For example, should foreign automobile manufacturers that sell vehicles in the United States be required to empower their personnel here to initiate recalls?**

Auto manufacturing is a global business, and it is important for US lawmakers to keep in mind that any provision adopted in the US could be subject to mirror legislation in more than 150 countries around the world, creating burdens for all automakers. There are logical reasons why recall decisions are ultimately made in the “home” country for automakers headquartered outside the US, as well as those headquartered domestically.

- Most design engineers and test engineers are in the home country,
- The home country is often in charge of selecting and communicating with component suppliers,
- The home country is in a better position to analyze the problem from a global perspective because it receives inputs from all markets.

At the same time, automakers recognize the importance of involvement in recall decisions from within the country where problems occur. Again, Secretary LaHood and Administrator Strickland testified at the hearings that the communications problem with the parent company in the recent instance was unique and steps have been taken to ensure that similar problems do not arise in the future.

#### **IV. Conflict of Interest Rules**

##### **1. Are NHTSA’s current conflict-of-interest rules sufficient to protect the agency from undue influence from former staff? Please explain your answer.**

Yes, there are extensive ethics and conflicts-of-interest regulations for all employees of the executive branch. These regulations are described in detail in 5 CFR Part 2635. The regulations cover everything including: gifts from outside sources, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position and what sorts of outside activities are permissible. The penalties associated with violating any of the ethics regulations include fines and potential imprisonment and are contained with 18 USC Sections 207 and 216.

##### **2. If you believe this is not the case, should new conflict-of-interest rules be codified in statute, or should that be left to the NHTSA to set for itself?**

Please see answer to the previous question.

**The Honorable Joe Barton Questions:**

1. You testified the NASS program – which plans to collect data on 4,500 crashes this year – could be funded with \$40 million more to increase the number of test crashes closer to 20,000.

- a. Please state how you arrived at the sample number of 20,000.

The original design for NASS completed in 1975 determined that 15,000 to 20,000 real-world crashes would need to be investigated annually to develop a valid national representation of most traffic safety phenomena. See J. O'Day, A. Wolfe, and R. Kaplan, Design for NASS: A National Accident Sampling System, (Ann Arbor, MI, Highway Safety Research Institute, The University of Michigan, 1975).

- b. Please state by what degree a sample size of 20,000 is statistically more accurate or relevant than 4,500.

Statistical analyses of 95% confidence and 5% accuracy are common. To achieve these confidence and accuracy levels, 740 reports of a given event would be needed. The need for a large number of annual reports arises when a particular set of events to be examined has low probability of occurrence in the sample. A report prepared in 1975 for the Transportation Subcommittee of the House Committee on Appropriations provides several illustrations for the need for a large number of crashes to be examined annually, including the following:

“Suppose, for example, one wishes to determine the distribution of car weight in rollover injury accidents for two categories of occupants: belted and unbelted, 740 reports in each of the two categories would be required. Injury accidents constitute 33% of reportable accidents, and the probability that an injury accident was a rollover 3–/ is about 8%. Perhaps 25% of those injured wore belts. Thus 0.67% of reportable accidents were rollover-injury-belted, and to find a sample of 740, an aggregate of 111,000 reports in the ‘reportable accident category would be required. (This same set of reports would provide more than enough unbelted-rollover-injury events.) If only injury accidents were reported, a sample of 37,000 reports would suffice. If the same analysis were to be done for fatal rollover accidents drawn from a mass accident file, the file would have to number 3,500,000 to find 740 fatal-rollover-belted events. The reason for the much larger data file in this case is that there are far fewer fatalities than injuries.” See Office of Technology Assessment. “Automobile Collision Data: An Assessment of Needs and Methods.” House Committee on Appropriations, Transportation Subcommittee. February 17, 1975.

2. Critics suggest NHTSA relies too much on manufacturers for information in order to do its job.

- a. Please describe the nature of the relationship and flow of information between your members and NHTSA.

The automobile is one of the most heavily regulated consumer products in American commerce. As the regulatory authority, NHTSA must communicate with automobile manufacturers in order to better understand the latest trends in safety and technology. Since consumers place such a premium on safety, automakers monitor and respond to customer concerns quickly. Manufacturers continually monitor a range of data to respond to consumers, including consumer complaints, warranty claims, property damage and field data about their products and conduct consumer satisfaction campaigns,

consumer advisories and many recalls before any crashes or injuries occur. The other source of that data is NHTSA.

**b. Please state your response to the criticism that NHTSA as a regulator is too close to and relies too much upon those it regulates.**

The Alliance disagrees with the assumption that communicating with the regulatory body is an inherently bad concept. It is critical and beneficial for everyone that there is an open dialogue with the agency. An open constructive dialogue with the agency and manufacturers has resulted in the vast majority of recalls since TREAD being conducted voluntarily. Public safety is not well served by a cumbersome process that is more polarizing, more guarded, with only formal written communications between automakers and the agency.

**3. You testified that “virtually all of today’s advanced safety technologies are being developed and implemented ahead of regulatory mandates.”**

**a. In terms of the universe of safety features, please state how many of those safety features were developed by industry without government prompting versus how many were mandated by Congress or NHTSA.**

Safety is one of the industry’s top priorities. Many of today’s most significant safety features have been developed and introduced by automakers....without a government mandate. It’s in our interests to do so, because safety sells like never before. Voluntary safety features include anti-lock brakes, brake assist, electronic stability control, electronic roll mitigation, adaptive headlights, side airbags and curtains, front passenger safety belt reminder systems and advanced collision avoidance features, including lane departure warning, active cruise control with automatic braking and blind spot monitors.

For example, Electronic Stability Control (ESC) was developed by the auto industry’s researchers and engineers and was soon after considered so effective, the federal government then mandated the technology. Even after the mandate, industry continues to implement ESC well in advance of the phase-in schedule outlined in the DOT rule. As of Model Year 2008, 81 percent of the new light vehicle models on sale were available with ESC (61 percent standard; 20 percent optional). The percentage of MY 2008 SUVs with ESC available was even higher. Ninety-five percent of MY 2008 SUVs were available with ESC (93 percent standard; 2 percent optional). This was well in advance of September 1, 2012 when such systems will be required.

Similarly, as of Model Year 2008, 76 percent of the new light vehicle models on sale are available with side curtain air bags (63 percent standard; 13 percent optional). The percentage of MY 2008 SUVs with side curtain air bags available is even higher. Ninety-seven percent of MY 2008 SUVs are available with side curtain air bags (91 percent standard; 6 percent optional).

Automakers also have collectively pursued several voluntary initiatives to enhance motor vehicle safety. Beginning in 2003, the Alliance worked with the Insurance Institute for Highway Safety (IIHS) on the development and implementation of test procedures and performance criteria to enhance occupant crash protection in crashes between cars and light trucks. To meet the performance criteria, automakers are designing the primary energy absorbing structures of new SUVs and pickup trucks to overlap at least 50 percent of the federally mandated bumper height zone for cars. Alternatively, automakers may elect to connect a second energy-absorbing structure to the primary one. Then the lower edge of the secondary structure cannot be any higher than the bottom of the car bumper zone. By September 1, 2009, just six years after beginning development, 100 percent of each manufacturer’s

applicable vehicles were being produced in a way that improves crash compatibility. IIHS' field studies support the expectation of substantial real-world benefits of designing vehicles to this agreement. IIHS reports an overall 19 percent reduction in passenger car driver deaths in both front-to-front and front-to-side crashes involving both SUVs and pickup trucks already designed to the agreement's front-to front compatibility requirements.

Automakers' most recent voluntary initiative was codified as part of the Cameron Gulbransen Kids Transportation Safety Act of 2007, which the Alliance supported. Automakers' voluntary agreement on Brake Transmission Shift Interlocks was adopted as part of this Act and now includes compliance enforcement and recall oversight by NHTSA. This agreement further reduces the risk of inadvertent shift selector movement in automatic transmission equipped vehicles in circumstances where an unsupervised child has access to both a vehicle and its ignition keys.

**b. In comparison to those innovations by industry versus those features mandated by government, please state which safety features have had the most success in preventing injuries or fatalities.**

Please reference the chart below:

Automaker-Developed Safety Innovations	Estimated/Potential Lives Saved Annually (not additive)
Electronic Stability Control (ESC)	5,300 to 9,600
Lane Departure Warning (LDW)	2,736
Safety Belt Reminder/Safety Belt Interlock (90% usage nationwide)	1,652
Side Airbags	1,029
Forward Collision Warning (FCW) w/automatic braking	632
Emergency Brake Assist	271
Adaptive Headlamps	225
Blind Spot Information System	38

Source: NHTSA & IIHS

4. Ms. Claybrook testified that NHTSA should mandate the use of event data recorders (EDRs) and that the types of information these "black boxes" collect should be expanded. She also testified these devices should not have an on/off switch (which would allow privacy-minded consumers to "opt-out" of data collection) and that EDR data should not be granted confidential treatment by NHTSA.

**a. Please state who owns the event data recorded by these devices.**

The Alliance supports the development of a Federal Motor Vehicle Safety Standard that would require, after an adequate lead-time, the installation of EDRs on all light vehicles (10,000 lb GVWR and under). Collecting the resulting data, when anonymous and aggregated, would further the long-term objectives of automotive safety by providing additional real-world safety performance information. As noted in response to earlier questions, this should be included as a part of increased NASS data collection, which the Alliance supports. However, the Alliance believes that data gathered by an EDR remains the property of the vehicle's owner or lessee, and the permission of the owner or lessee, or a search warrant or subpoena is required to access the data. Thirteen states (AR, CA, CO, CT, ME, NV, NH, NY, ND, OR, TX, VA, and WA) have enacted laws that explicitly state that a vehicle's owner owns the event data recorded and that the owner's consent is needed to access this data. The Alliance further believes that common law principles assign ownership of event data recorded to the vehicle owner in instances where there is no explicit statement to this effect in individual state statutes.

**b. Please state your recommendations on how such data should be handled at the Federal government level.**

Any data recovered from an EDR by federal investigators under authority given by the vehicle owner should be included in NASS only after any personal identifying information has been redacted. In particular, the Alliance recommends that the last six digits of the Vehicle Identification Number (VIN) be redacted.

Although VINs are supposed to be immune from "reverse engineering" of the owner of the affected vehicle under state and federal privacy laws, the truth is that it is relatively easy to determine the name, address, social security number, home telephone number and other personal identification information from a VIN. To prove this point, an Alliance member found two Vehicle Owner Questionnaires (VOQs) with full VINs on NHTSA's website, and was able to determine the name, home address and home telephone number of the vehicle owners, the names of the lien holders, and, in one of the two examples, was able to determine the owner/lessor's social security number and obtain information about an accident involving that vehicle. It should be noted that the Alliance member's experiment here did not involve vehicles manufactured or financed by that company; rather, this information was found on commercially available databases.

Personal identifying information is protectable under Exemption Six of the Freedom of Information Act (FOIA), which guards the release of information that could invade the personal privacy of individuals.

**c. Please state whether you believe private citizens should be able to opt <out> of this data collection (sic).**

EDRs should not be required to have an on/off switch which would allow privacy-minded vehicle owners to "opt-out" of this data collection for the following reasons:

EDRs are a functionality engineered into airbag control modules, electronic stability control modules, etc. Requiring on/off switches for these devices could compromise the functional integrity of the safety system fitted with the EDR functionality.

The privacy of vehicle owners is protected by (1) assigning ownership of any data recorded to the vehicle's owner, (2) requiring the vehicle owner's permission to access any data recorded, and (3)

requiring that any personal identifying information contained in the data record, such as the VIN, be redacted or otherwise protected under Exemption Six of the Freedom of Information Act.

**d. Please state your opinion on how Congress should balance Ms. Claybrook's suggestions with the serious and legitimate privacy concerns of citizens.**

Vehicle owner's privacy concerns should be protected as follows:

Consumer Information: The Alliance supports providing consumers with important information on their autos, including EDRs. Notification of the presence of EDRs is provided in the owner's manual, along with information on what data are collected, how the data is used and consumer ownership of data.

Consumer Ownership of Data: The Alliance advocates that data gathered by an EDR remains the property of the vehicle's owner or lessee, and the permission of the owner or lessee is required to access the data.

Service Agreement Notification: The Alliance supports requirements that subscription service providers notify their customers if crash-related information will be recorded and transmitted. Subscription services include Automatic Collision Notification.

National Leadership: The Alliance supports federal policy that would pre-empt inconsistent state or local laws. A federal policy would ensure that the benefits of EDRs are not jeopardized by an unnecessary patchwork of potentially conflicting state requirements.

**5. The industry spends billions developing new safety technologies every year. Please state whether increased penalties and additional criminal liability pose a realistic threat of a chilling effect on research and development into new technologies or on the deployment of new technologies and, if so, how.**

Some have suggested that manufacturers should face criminal penalties for introducing defective products into commerce. Such penalties would very clearly have a chilling effect on research, development and deployment of innovative technologies. According to the statute, "defect" includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment." 49 USC 30102(a)(2). Because there is no agreed-upon definition of "defect" that would put a manufacturer on notice of the conduct that is subject to criminal sanctions, criminal penalties would criminalize uncertain, subjective judgments after the fact as to whether a vehicle contains a defect related to safety. The safest course of action for manufacturers under such a regime would be to avoid innovation that could end up exposing the corporation or its officers to criminal prosecution.





